R. N. Vaishnavi
M.A. (PSYCHO.); M.A, (POL. SC.); PUNJAB
L.L B. ALLAHBAD
Advocate
Supreme Court of India
High Court of J & K State
9B, R, C. ROAD, PRATAP PARK.
SRINAGAR (KASHMIR.)

APPLICATE

Title [redacted]

Author [redacted]

Accession No. [redacted]

Call No. [redacted]

BORROWER'S NO.	ISSUE DATE	BORROWER'S NO.	ISSUE DAT
[redacted]			

Title [redacted]

Author [redacted]

Accession No. [redacted]

Call No. [redacted]

BORROWER'S NO.	ISSUE DATE	BORROWER'S NO.	ISSUE DAT
[redacted]			

THE
PUNJAB LAW REPORTER

CONTAINING

Important cases determined by the Jammu & Kashmir High Court,

Regulations and Notifications of the Jammu and Kashmir State.

Jammu and Kashmir Section

EDITORS.
- MR. SHAMAIR CHAND, BAR-AT-LAW.
- MR. SHAMBU LAL PURI, BAR-AT-LAW.
- MR. RAM LAL ANAND (MALIK), ADVOCATE.
- MR. ANAND MOHAN SURI, ADVOCATE.

ASSISTANT EDITORS.
- MR. ASA RAM AGGARWAL, ADVOCATE.
- MR. MUHAMMAD AMIN, BAR-AT-LAW.
- MR. DINA NATH BHASIN, ADVOCATE
- MR. NAND LAL BHALLA, ADVOCATE.

—— :o: ——

Vol. XXXIX--1937.

Citation : 39 P. L. R., J. & K., 1.

—— :o: ——

Published under the Authority of the High Court of Judicature, Jammu & Kashmir.

—— :o: ——

PRINTED AND PUBLISHED BY L. ANAND MOHAN SURI AT THE PUNJAB LAW REPORTER PRESS, LAHORE.

[redacted]

Title [redacted]

Author [redacted]

Accession No. [redacted]

Call No. [redacted]

BORROWER'S NO.	ISSUE DATE	BORROWER'S NO.	ISSUE DAT
[redacted]			

The Punjab Law Reporter, 1937

VOLUME 39.

NOMINAL INDEX

JAMMU AND KASHMIR HIGH COURT RULINGS.

SUBJECT INDEX

Jammu and Kashmir Section

—:o:—

THE

Punjab Law Reporter

JAMMU AND KASHMIR SECTION.

Vol. XXXIX.] JANUARY. [1937.

39 P. L R., J. & K. 1.,

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice and Mr. Justice Janki Nath Wazir.

SANTOKH SINGH *versus* STATE.

Criminal First Appeal No. 6 of 1993.

Jammu, 26th *Poh* 1993/9th January 1937.

When a person to whom pardon has been tendered is subsequently tried under section 339 of the Code of Criminal Procedure it is essential that the mandatory provisions of law as contained in section 339-A of the Code should be strictly complied with. According to section 339-A an enquiry should first be made as to whether or not the accused has complied with the conditions on which the tender of the pardon was made to him and a clear finding on that point should be recorded by the court. Trial will be illegal if the provisions of section 339-A are not complied with.

Appeal against the order of Sessions Judge, Jammu, dated 22nd *Katik* 1993.

Messrs. Amar Dass and *Dina Nath, Advocates*, for Appellant.

Government Advocate.

JUDGMENT.

The accused Santokhsingh has been convicted by the Sessions Judge, Jammu, under section 302 of the Ranbir Penal Code and sentenced to death subject to confirmation by His

Highness the Maharaja Bahadur. This is an appeal against that conviction and sentence.

In connection with the murder of one Ibrahim a tender of pardon was made to the present accused Santokhsingh. Subsequently the Public Prosecutor made a report that Santokhsingh had forfeited his pardon as he had not disclosed the full facts of the case and on the basis of that report the trial of the accused was started on a charge of murder. It is urged by the appellant's learned Counsel Mr. Amardass that the present trial of the accused on a charge of murder is absolutely illegal as the mandatory provisions of law as contained in section 339-A of the State Code of Criminal Procedure runs as follows:—

"(1) The court trying under section 339 a person who has accepted a tender of pardon shall—

(*a*) if the Court is a High Court or Court of Sessions, before the charge is read out and explained to the accused under section 271, sub-section (1) and

(*b*) if the court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the court with the aid of the assessors, or the magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the court shall, notwithstanding anything contained in this Code, pass judgment of acquittal."

According to this section it was essential for the trial court, before proceeding with the trial of the accused for the offence in respect of which the pardon was tendered to him, to make proper enquiry in regard to the point as to whether the accused had complied with the conditions on which the tender of pardon was made and to record the finding whether or not the accused had complied with the conditions of the pardon. In this connection reference has been made to *5 Lahore 379* and *30 Criminal Law Journal 559*. In *5 Lahore 379* it was held that in a case where the accused was not asked before the charge was read out to him whether he pleaded that he had complied with the conditions on which the tender of pardon was made nor the terms of section 339-A

were explained to him, the trial was vitiated by non-compliance with the provisions of section 339-A of the Code of Criminal Procedure. In *30 Criminal Law Journal 559* it was held that the provisions of section 339-A were compulsory and the accused could not be tried and convicted until the court trying him had recorded a finding that he had forfeited the pardon which had been offered to him by not complying with its conditions. In the present case it is admitted by the learned Government Advocate that no enquiry was made by the trial court under section 339-A of the Code of Criminal Procedure and no finding was recorded as to whether the accused had complied with the conditions of the pardon or not, and so the present trial of the accused Santokhsingh on charge of murder is illegal.

We therefore set aside the order of the trial court appealed against but in the circumstances of the case we direct that the accused shall be retried according to law. As the Sessions Judge has expressed an opinion in the case we direct that the retrial of the case shall be made by the Additional Sessions Judge Jammu.

Order set aside.

---

39 P. L. R., J. & K., 3.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

RAHIM BEG *versus* STATE.

Criminal 1st Appeal No. 75 of 1993.

Jammu, 24th *Maghar* 1993/8th December 1936.

Where in a case triable by a court of Sessions with the aid of assessors, the number of assessors is not as required by law under section 284 of the Criminal Procedure Code.

Held, that, there was no legal trial and the proceedings must be set aside and a new trial directed.

Held, further, that such a defect cannot be cured by section 537 of the Code of Criminal Procedure.

Appeal against the order of Sessions Judge, Ladakh, dated 13th *Bhadon* 1993.

Sardar Balandar Singh, for the Accused-appellant (*amicus curiæ*).

Government Advocate.

ORDER.

The counsel for the accused appellant pointed out in the very beginning that the trial of this case by the Sessions Judge Ladakh has been illegal, as the trial was held with the help of only one assessor whereas according to section 284 of the Code of Criminal Procedure the number of assessors ought have been at least three. The learned Government Advocate admitted the illegality committed in the case. When the trial has to be made by a sessions court with the help of assessors and the number of assessors is not as required by law, there is no properly constituted court and the trial held by any such court is illegal. It is thus clear that the trial of this case has been illegal and the defect is not such as can be cured by section 537 of the Code of Criminal Procedure. We therefore set aside the proceedings in the case as well as the conviction of the accused appellant and direct that a new trial shall be held by the Sessions Judge Ladakh strictly according to the provisions of law.

A copy of this order shall be immediately sent to the Superintendent Jail Srinagar. The Superintendent Jail shall arrange to send the accused person for retrial to the Sessions Court Ladakh as soon as the passes reopen, and in the meantime the accused shall be treated as an under-trial prisoner.

The Registrar of the High Court is requested to send a separate letter to the Sessions Judge Ladakh pointing out the illegality committed by him and the inconvenience and delay caused as a result of that illegality. It is expected that the Sessions Judge will be more careful in future in trying such cases.

---

39 P. L. R., J. & K., 4.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice
and Mr. Justice Janki Nath Wazir.

SONA MALIK *versus* STATE.

Criminal 1st appeal No. 78 of 1993.

Jammu, 18th *Maghar* 1993/2nd December 1936.

When the injury was caused not by a sharp end of the Rambi but by the blunt end, held that the offence falls under section 326 of the Ranbir Penal Code and not under section 304.

Appeal against the order of Sessions Judge, Srinagar, dated the 32nd *Sawan* 1993.

Nemo for the Appellant.
Government Advocate.

ORDER.

The accused Sona Malik has been convicted by the Sessions Judge Kashmir under section 304 (2) of the Ranbir Penal Code and sentenced to five years rigorous imprisonment and a fine of rupees twenty five. In default of payment of fine the period of rigorous imprisonment is to be six months. Against this conviction and sentence the present appeal has been filed by the accused Sona Malik.

The facts of the case are quite simple. On 16th *Har* 1992 some cattle belonging to one Gani Bat strayed into the field of one Rahmat Parrey. Upon that there was altercation between Gani Bat on one side and Rahmat Parrey and his relative Sona Malik accused on the other. Rahmat Parrey and Sona Malik started beating Gani Bat and upon that Dallawar Malik, a relative of Gani Malik, came to intervene. Dallawar Malik was caught hold of by Rahmat Parrey and a blow on Dallawar's head was inflicted by Sona Malik accused with the blunt end of a *rambi* which Sona Malik held in his hand. The report of the occurrence was made to the Police station the same evening and Dallawar Malik was sent to the State Hospital at Sopore the same night. As the injury caused to the head of Dallawar Malik was very severe he was sent to the State hospital at Srinagar. He was making good progress at the Srinagar Hospital but after a few days he left for his village and on 16th *Sawan* 1992 that is one month after the occurrence he died. According to the evidence of the medical officer who conducted the *post mortem* examination the death of the deceased was due to suppuration of membranes following the injury on his head.

The accused persons pleaded not guilty. He admitted his presence on the spot at the time of the fight but suggested that the injury on the head of Dallawar Malik deceased was caused either by Gani Bat or some other member of his party. This defence is ridiculous and has been rightly rejected by the Sessions Court.

The fact that the blow was inflicted by Sona Malik accused with the blunt end of the *rambi* on the head of Dillawar Malik deceased is clear from the evidence of Jabar Malik, Gani Bat and Mohammad Malik. Jabar Malik and Mohammad Malik were absolutely independent witnesses and

they saw the accused striking the blow on the head of Dallawar Malik. Kabir Bat and Khizar Bat witnesses were examined by the Sessions Court under section 540 of the Criminal Procedure Code and both these witnesses admitted the presence of Jabar Malik and Mohammad Malik on the spot at the time when Dallawar Malik was lying on the ground with serious injury on his head. Kabir Bat witness also stated that on reaching the spot he had been told by Jabar Malik and Mohammad Malik that the injury to Dallawar Malik was caused by Sona Malik. So we see no reason to disbelieve the evidence of the witnesses Jabar Malik and Mohammad Malik. Then there is the declaration of Dallawar Malik deceased which was recorded in the State Hospital Sopore on the evening of 16th *Har* 1992 that is the same day when the occurrence took place. In that declaration Dallawar Malik clearly stated that the injury to his head was caused by Sona Malik accused. In the condition in which Dallawar Malik was at that time it cannot be expected that he would make a false statement against Sona Malik if the injury to his head was caused by somebody else. So we are perfectly convinced that the injury inflicted on the head of Dallawar Malik was caused by Sona Malik accused.

The learned Government Advocate frankly stated before us that as the injury was caused not by the sharp end of the *rambi* but by the blunt end the offence falls under section 326 of the Ranbir Penal Code and not under section 304. We agree with this view and we therefore alter the conviction of the accused person under section 326 of the Ranbir Penal Code.

As regard the sentence we think that considering all the circumstances of the case a sentence of two years' rigorous imprisonment and a fine of rupees twenty-five will be sufficient and we order accordingly. The period of rigorous imprisonment in default of payment of fine shall be one month. The appellant shall be informed of this order in Jail.

39 P. L. R., J. & K., 6.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

NATHU RAM, ARORA MAL, OM PARKASH, WADHAWA SHAH *versus* RAM CHAND, KARAM CHAND, MUNSHI RAM, BABU RAM, KUNJ LAL, MUKAND LAL.

Second Civil Appeal No. 138 of 1993.

Jammu, 9th *Magh* 1993.

A mortgagee in possession of the mortgaged property cannot set up adverse possession over the mortgaged property, unless he proves a subsequent valid sale. If a valid sale is not proved, his possession must be taken to retain its original character.

Appeal against the order of City Judge, Jammu, dated 31st *Har* 1993.

Mr. Chaman Lal, Advocate.

Mr. Dina Nath, Advocate.

JUDGMENT.

The plaintiffs instituted a redemption suit in respect of their shares in two shops situated in the town of Jammu. The suit was contested by defendants 1 to 3. They admitted the fact of the original mortgage on 26th *Katik* 1956 but pleaded that as the plaintiffs had subsequently sold their shares in the shop on 5th *Har* 1973 for a sum of Rs. 275 the redemption suit was incompetent. The trial court passed the preliminary decree for redemption on payment of Rs. 26-12-0 by the plaintiffs to the defendants. On appeal this decree was upheld by the learned City Judge Jammu. The defendants 1 to 3 have now come in second appeal to this court.

The sale relied upon by the appellants is the one which is alleged to have been brought about by virtue of an unregistered sale deed dated 5th *Har* 1973. The execution of this document is totally denied by the plaintiffs. Now the only point of law urged by the appellants' learned counsel is that as the unregistered sale deed was executed on 5th *Har* 1973 and the present suit for redemption was instituted in *Bhadon* 1992 the defendant appellants had acquired a right of adverse possession over the property and therefore the suit for redemption did not lie. In support of this contention the learned counsel has cited *1925 Madras 566* and *1921 Madras 82*. I have examined both these rulings but they have no application in the present case. *1925 Madras 566* is a ruling bearing on section

54 of the Transfer of Property Act. It may be noted here that there is some difference in regard to section 54 between the British Indian Act and the State Regulation regarding transfer of property. In British Indian Act there is a provision that in the case of tangible immovable property of value less than Rs. 100 such transfer may be made either by unregistered instrument or by delivery of the property. This provision does not exist on the State Transfer of Property Regulation. According to section 54 of the State Regulation the transfer of immovable property whatsoever its value may be can only be effected by means of a registered instrument. *1925 Madras 566* related to a case in which the value of the immovable property was less than Rs. 100. So *1925 Madras 566* has nothing to do with the present case. The other ruling quoted by the learned counsel *1921 Madras 82* also relates to section 54 of the Transfer of Property Act. In this ruling it was held that an unregistered sale cannot be set up as a transaction having the effect of itself to transfer any interest in the property. But it is permissible to consider it as showing the nature of the transferee's subsequent possession. This ruling also is not applicable in the present case. On the other hand a reference may be made to *1932 Allahabad 437*, *1926 Patna 512* and *14 Madras 38*. In *14 Madras 38*, it has been held that neither the original mortgagee nor his son can rely on twelve years rule of limitation unless he can prove the subsequent valid sale, in the absence of which his possession must be taken to retain its original character. In *1926 Patna 512* it was held that the mortgagee cannot acquire a title by adverse possession over a mortgagor. Similarly it was held in *1932 Allahabad 437* that a mortgagee in possession of mortgaged property cannot set up adverse possession over the mortgagor. In the present case it is admitted on behalf of the appellants that their original possession of the property in dispute began in *Katik* 1956 when the property was mortgaged to them. No subsequent valid sale of the property has been established and so the question of adverse possession of the mortgagee does not arise.

The appeal fails and is dismissed with costs.

Appeal dismissed.

39 P. L. R, J. & K. 9.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice
and Mr. Justice K. L. Kichlu.

STATE *versus* SHER MOHAMMAD.

Criminal 1st appeal No. 41 of 1993.

Jammu, 16th *Maghar* 1993.

Where the accused strikes the deceased person on the head with a sharp edged hatchet and thus causes death:

Held, that, the intention of the accused was to cause the death of the deceased person and as such the offence falls under section 304 Part 1 of the Ranbir Penal Code.

Appeal against the order of acquittal of Additional Sessions Judge, Jammu, dated 18th *Chet* 1992.

Government Advocate.

Respondent in person.

ORDER.

In this appeal filed on behalf of the Government it is urged by the learned Government Advocate that the accused has been wrongly convicted by the lower court under section 335 of the Ranbir Penal Code and that a conviction under section 304 Part I should be recorded.

We have examined the record. The facts of the case are quite simple. On 1st *Phagan* 1992 Mohammad Alam removed some fence from the field of Sher Mohammad accused and put that fence in his own field. Sher Mohammad objected to this removal of his fence by Mohammad Alam and there was an altercation between the parties. Sher Mohammad who had a hatchet in his hand inflicted a blow on the head of Mohammad Alam with the sharp end of the hatchet and as a result of that injury Mohammad Alam died in the State Hospital at Bhimber on 7th *Phagan* 1992.

The only point to determine in this appeal is as to whether the offence falls under section 335 of the Ranbir Penal Code as found by the lower court or under section 304. The accused was charged under section 302 of the Ranbir Penal Code. According to the Medical evidence the death of the deceased was caused "by the incised wound over the scalp cutting the parietal bone rupturing the meninges and brain and afterward causing inflammation due to the impaction of three pieces of cut bone." When the accused hit the deceased person on the head with a sharp edged weapon there can be no doubt that the intention of the

accused person was to cause the death of the deceased person and as such the offence clearly falls under section 304 Part I of the Ranbir Penal Code. We therefore record the conviction under section 304 Part I of the Ranbir Penal Code against the accused respondent.

As regards the sentence we think that in view of the old age of the accused respondent a sentence of five years rigorous imprisonment and a fine of rupees five will be sufficient and we order accordingly. The period of rigorous imprisonment in default of fine shall be ten days.

---

39 P. L. R. J & K. 10.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice, and Mr. Justice K. L. Kichlu.

LAJU *versus* SANSARO, CHHUNKOO.

Second Civil Appeal No. 91 of 1993.

Jammu, 22nd *Poh* 1993.

The custom must be proved by satisfactory evidence. Isolated instances cannot prove the existence of a well established custom.

Appeal against the order of District Judge, Jammu, dated 7th *Baisakh* 1993.

Mr. Dhanpat Rai, Vakil.

Mr. Pindi Dass Goswami.

JUDGMENT.

The plaintiff instituted a suit for the restitution of conjugal rights in respect of his wife *Mst.* Sansaro. The plaintiff's claim was that *Mst.* Sansaro was his lawfully wedded wife and that she had been wrongfully taken away by defendant No. 2 Chhunkoo. The defendants admitted that *Mst.* Sansaro was the wedded wife of the plaintiff but pleaded that on 13th *Magh* 1991 she was sold by the plaintiff to defendant No. 2 for a sum of Rs. 100. The trial court decreed the plaintiff's suit but on appeal the learned District Judge of Jammu set aside the decree and dismissed the plaintiff's suit. The plaintiff has now come in second appeal to this court.

We are surprised to read the judgment of the lower appellate court. The purport of the lower appellate court's finding is that although *Mst.* Sansaro was at first the wedded wife of the plaintiff she was subsequently sold to Chhunkoo for a sum of Rs. 100 and that according to the special custom prevalent among the Jhewars of Jammu this sort of sale of wives is permissible. The custom alleged by the defendants is a most immoral one and its existence has not been established by means

of any satisfactory evidence. The defendant's witness Lehnu cited one instance in which a woman was sold by her husband in Ambgharota. Similarly Galodu witness cited an instance of the sale of a woman in Chenani. But these isolated instances do not prove the existence of any well established custom. It is admitted on behalf of the respondents that *Mst.* Sansaro was properly married to the plaintiff and that she lived with him as his wife for about sixteen years and that during this time she bore him two children. In these circumstances the plaintiff cannot be deprived of his wife and it was sheer high-handedness on the part of the defendans No. 2 to keep the woman with him.

In the result we accept this appeal and setting aside the order of the lower appellate court restore the decree of the trial court. The defendant No. 2 shall pay the costs to the plaintiff of all the courts.

Appeal accepted.

---

39 P. L. R., J. & K., 11.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice Abdul Qayoom, Chief Justice and
Mr. Justice Janki Nath Wazir.

Sardar HARI SINGH *versus* FIRM KANSHI RAM DEVIDAS.

First Civil Appeal No. 38 of 1992.

Jammu, 23rd *Maghar* 1993.

Order rejecting an application under Order 37, rule 4 of the Code of Civil Procedure is not appealable. Order 9, rule 13 has no application when setting aside of an ex parte decree passed under Order 37 is desired.

Appeal against the order of Mr. Justice B. R. Sawhny, dated 13th *Maghar* 1992.

Mr. Ladha Singh, Advocate.

Mr. A. R. Oswal, Advocate.

JUDGMENT.

On 30th *Har* 1992 firm Kanshi Ram Devi Das plaintiff filed a suit under Order 37 of the Code of Civil Procedure in the High Court of Judicature against the defendant *Sardar* Hari Singh on the basis of a pro-note executed by the defendant in favour of the plaintiff for Rs. 14,981. Notice was issued to the defendant on the 7th *Sawan* 1992 and served on the 16th *Sawan* 1992, according to which the defendant had to obtain leave to appear and defend the suit within ten days, *i. e*, upto the 27th of *Sawan* 1992. The defendant failed to

appear and obtained leave within the prescribed period and on the 32nd *Sawan* 1992 an *ex parte* decree was passed against him with costs. The defendant filed an application under Order 37, rule 4 of the Civil Procedure Code to set aside the *ex parte* decree which was rejected on 13th *Maghar* 1992. The defendant has come up in appeal to this court against the order of the learned Judge rejecting the application.

The counsel for the respondent raised a preliminary objection that the order rejecting the application under Order 37, rule 4 is not appealable. The appealable orders are mentioned in section 104 and Order 43 of the Civil Procedure Code but this order rejecting the application under Order 37, rule 4 is not mentioned in the appealable orders. The appeal is competent from the decree passed under Order 37 and the rejection of an application under Order 37, rule 4 could also form a ground of appeal preferred against the decree passed. The counsel for the appellant has not been able to meet the preliminary objection. He has urged that the suit was not competent under Order 37. He intented to take advantage of the head-note of the Statute. The head-note runs thus "Summary procedure on negotiable instruments" and the learned counsel urged that the pro-note not being an negotiable instrument, the suit could not be filed under Order 37. The Statute itself is very clear which says "All suits upon bills of exchange, Hundis or promissory notes may in case the plaintiff desires to proceed hereunder be instituted by presenting the plaint in the form prescribed." We do not see how the counsel could seek assistance of the head-note when the Statute clearly gives remedy to the plaintiff. Then the counsel urged that the application which was filed under Order 37, rule 4 may be treated as an application under Order 9 rule 13. This request is untenable for the simple reason that the procedure under Order 37 is quite peculiar from the ordinary suits. The defendant cannot appear and defend unless he obtains leave from the court. There being a special provision under rule 4 of the same Order to apply for setting aside of the *ex parte* decree passed under Order 37, Order 9, rule 13 which is applicable only to the ordinary suits has no application in the present case. Therefore we hold that the order of the learned Judge rejecting the application under Order 37, rule 4 is not appealable.

We dismiss the appeal with costs.

Appeal dismissed.

39 P. L. R., J. & K., 13.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice Abdul Qayoom, Chief Justice
and Mr. Justice Janki Nath Wazir.

DR. ROOP CHAND *versus* DURGA DAS AND KISHAN CHAND

Second Civil Appeal No. 68 of 1992.

Jammu, 7th December 1936/23rd *Maghar* 1993.

When the mistake on the part of the counsel is not due to ignorance but is due to want of due care and attention, it cannot afford a ground for extending time under section 5 of the Limitation Regulation.

The question whether the mistake of a pleader is a sufficient ground for extension of time is a question which depends upon the peculiar circumstances of each case.

Appeal against the decree of Additional District Judge, Jammu, dated 19th *Poh* 1992.

Mr. Ladha Singh, Advocate.

Mr. Thakar Das, Advocate.

JUDGMENT.

This second appeal has arisen on the following circumstances:—

On 26th *Jeth* 1982 the plaintiff filed a suit against the defendants for dissolution of partnership and rendition of accounts. The suit was valued for the purpose of jurisdiction at Rs. 400. On 18th *Jeth* 1984 a preliminary decree was passed against the defendants. But subsequent to the preliminary decree a compromise was effected between the parties and the final decree was passed on the basis of that compromise on 7th *Maghar* 1990 for Rs. 2,444. The plaintiff filed an appeal in this court on 5th *Phagan* 1990 from a decree the pecuniary value of which was Rs. 2,444. This court by its order dated 25th *Phagan* 1991 held that the appeal did not lie to this court under section 34 of the Civil Court Regulation 1977 and returned the memorandum of appeal to be presented to the proper court. The appeal was then filed in the court of Additional District Judge on the 26th *Phagan* 1991. The learned Additional District Judge dismissed the appeal on the ground that the appeal was barred by time. The plaintiff-appellant has now come up to this court in second appeal.

The point urged by the learned counsel for the appellant is that the appeal was filed to the wrong court due to the honest mistake of the counsel and therefore he is entitled to the extension of time under section 5 of the Limita-

tion Regulation. He cited authorities in support of his contention but the authorities which were cited do not help him. The authorities clearly say that a mistake of a counsel should be *bona fide* and there should be no want of due care and attention on the part of the counsel. Where the mistake on the part of the counsel is not due to ignorance but is due to want of care and attention it cannot afford a ground for extending time. No doubt there are conflicting authorities on the subject and each case must depend on its own peculiar circumstances. What we have to determine therefore in the present instance is whether the circumstances in which the appeal came to be filed in the wrong court are such as could really be excusable. We have no doubts however that the mistake could not have been due to the ignorance of the counsel but was due to want of care and attention which is necessary on the part of a legal practitioner when being consulted by a client. The circumstances of the present case do not appear to us to call for any interference on our part with the discretion exercised by the learned Additional District Judge and we therefore dismiss the appeal with costs.

Appeal dismissed.

---

39 P. L R J & K. 14.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice
and Mr. Justice K. L. Kichlu.

LOCHAN, SANTOO *versus* STATE.

Criminal 1st appeal Nos. 4 and 5 of 1993.

Jammu, 15th *Poh* 1993.

It is not safe to convict the accused merely on the evidence of the approver unless it is satisfactorily corroborated.

Further held that the articles alleged to have been recovered from the accused must be satisfactorily identified as forming part of the stolen property.

Appeals against the order of Additional Sessions Judge, Jammu, dated 20th *Bhadon* 1993.

Government Advocate.

JUDGMENT.

The accused Lochan and Santoo have been convicted by the Additional Sessions Judge Jammu under section 457 of the Ranbir Penal Code and sentenced to five years' rigorous imprisonment and a fine of Rs. 20 each. Against these convictions and sentences the accused persons have filed

separate appeals in this Court. As the facts of the case are the same this Judgment will govern the decision of both the appeals.

On the night between 26th and 27th *Assuj* 1992 the house of one Gokal Pujari was broken open and a good deal of property was stolen. On that night Gokal Pujari was not at his house but had gone away to some other place and his brother Rasila is said to be present in his house at the time of the theft. One of the persons who took part in the offence turned approver. His name is Gokal Thakar and Lochan and Santoo have been convicted and sentenced as mentioned above.

The learned Government Advocate realized the weak nature of the evidence on record and frankly admitted that the only question in the case was as to whether the solitary evidence of the approver is to be relied upon or not. We have examined the record and we do not think that in the circumstances of the case it will be quite safe to convict the accused persons merely on the evidence of the approver. In the first place the approver seems to have taken good care to take as little responsibility on himself as possible. He does not say that he took any active part in the theft or robbery which was committed in the house of Gokal Pujari. In regard to his own part in the affair he only says that he was left out of the house to keep watch on the shoes of the other culprits. Besides this we do not find any satisfactory corroboration of the approver's statement forthcoming from any independent evidence.

Now we come to the recoveries said to have been made from the accused persons. The articles said to have been recovered a katora, a turban, a piece of Pattoo, a brass thali and a Huqa are things of daily use which are found in the house of every villager and these articles could not be satisfactorily identified as forming a part of the stolen property. No special marks of any kind were found on any of these things and so it was very difficult for anybody to say with certainty that these articles were exactly the same which were stolen from the complainant's house. In these circumstances we are not satisfied that an offence under section 457 has been fully brought home to the accused persons and so in our opinion their conviction cannot be maintained We therefore accept these appeals and setting aside the conviction of Lochan and Santoo acquit them. They shall be released forthwith and the fine if any

recovered shall be refunded to them. A copy of this order shall be immediately sent to the Superintendent Jail Jammu.

---

39 P. L R J & K., 16.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

RAM SARAN, KALIDAS *versus* DAYA RAM

Second Civil Appeal No. 114 of 1993.

Jammu, 8th *Poh* 1993.

In a suit for malicious prosecution, the mere fact that the complaint filed by the defendant was dismissed and the accused (plaintiff) discharged does not render the defendant liable for malicious prosecution. The proof of malice and absence of reasonable and probable cause on the part of the defendant is essential.

Appeal against the order of Additional District Judge, dated 15th *Jeth* 1993.

Mr. Dina Nath Varma, Vakil, for Respondent.

ORDER.

The plaintiffs instituted a suit against the defendant for the recovery of Rs. 150 by way of damages. The plaintiffs' allegation was that a false and malicious criminal case was instituted by the defendant against them and so the present suit was instituted for the recovery of damages for malicious prosecution. The trial court passed a decree for Rs. 75 in favour of the plaintiffs against the defendant. On appeal the learned Additional District Judge of Jammu set aside the decree of the trial court and dismissed the plaintiffs' suit. The plaintiffs have now come in second appeal to this court.

There is no doubt that a log of wood belonging to the defendant was stolen from his house and he suspected that the log had been stolen from his house by the plaintiffs. Some pieces of wood were subsequently recovered from the plaintiffs' house but they were discharged as the pieces of wood were not properly identified. In any case the mere fact that the complaint filed by the defendant was dismissed and the accused discharged does not render him liable for malicious prosecution. The plaintiffs in this case have not been able to show that the complaint filed by the defendant was due to any malice on his part. The complaint was not made without reasonable or probable cause and so the plaintiffs suit has been rightly dismissed by the lower appellate court.

The appeal is dimissed with costs.

Appeal dismissed.

---

39 P. L. R.. J. & K., 17.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

1. BAG ALI, 2. MANGTA,
3. FAZALDAD — *versus* — STATE.

Criminal 1st appeal Nos. 2, 3 and 4 of 1993.

Jammu, 17th *Maghar* 1993.

When the approver gives a very connected and convincing account of the occurrence and does not attempt to absolve himself and there is a sufficient corroboration of his statement.

Held, that, there is no reason why such an evidence should not be believed.

Appeals against the order of Additional Sessions Judge, Jammu, dated 25th *Sawan* 1993.

Government Advocate.

ORDER.

The Additional Sessions Judge Jammu convicted Bagali, Mangta and Fazaldad under section 304 (i) of the Ranbir Penal Code and sentenced them as follows:—

Mangta and Fazaldad to seven years rigorous imprisonment and a fine of Rs. 20 each, and Bag Ali to five years rigorous imprisonment and a fine of Rs. 20.

Against this conviction and sentence the accused persons have filed three separate appeals, but as the facts of the case are the same this judgment will govern the decision of all the three appeals.

The facts of the case are quite simple. The deceased Bag Ali, who was a cousin of the accused Bag Ali, had illicit connection with the accused Bag Ali's wife *Mst.* Makhni and this fact was known to everybody in the village. The deceased Bag Ali lived in a house adjoining the house of the accused Bag Ali and the courtyard of both the houses was a common one. A few days before the occurrence a party of twenty persons including the accused persons, the deceased Bag Ali, the approver Fazal Ellahi and the witnesses Manga and Inayat went out of the village for floating timber in the River Jhelum. After the completion of the work the deceased Bag Ali was found to be very anxious to return to the village. From that anxiety on the part of Bag Ali deceased, accused Bag Ali and his companions thought that the deceased Bag Ali wanted to reach the village before everybody else simply to meet *Mst.* Makhni and so the accused Bag Ali and his companions deputed Fazaldad accused to go with Bag Ali deceas-

ed as a sort of a spy to watch his movements. So Fazal Dad went along with Bag Ali without the latter knowing as to why Fazal Dad was accompanying him. When Bag Ali deceased reached his house Fazal Dad went back and informed his companions of the fact. Thereupon the accused Bag Ali, Fazal Dad and Mangta and Fazal Ellahi approver started towards the house of Bag Ali accused and reached there at about 10 p. m. on 21st *Magh* 1992. At that time the door of the house of Bag Ali accused was shut but the accused persons could see through a hole in the door that the deceased Bag Ali was committing adultery with *Mst.* Makhni.

Thereupon the door of the house was opened and the accused persons and Fazal Ellahi approver went inside the room. Fazal Ellahi and Bag Ali accused caught hold of Bag Ali deceased and Mangta and Fazaldad caught hold of *Mst.* Makhni. The accused persons had two hatchets with them and with those hatchets Bag Ali deceased and *Mst.* Makhni were done to death on the spot. According to Medical Officer who conducted the post mortem examination, the death of the deceased persons was due to the fracture of the base of the skull in both the cases.

The accused persons denied all knowledge of the occurrence and pleaded *alibi.* The defence evidence produced by the accused persons in their defence was entirely worthless and has been rightly rejected by the Sessions Judge. In the circumstances of the case there would be no eye witness of the offence except the approver Fazal Ellahi and the approver gave a very connected and convincing account of the occurrence from the beginning to the end. The approver does not attempt to absolve himself but gives a clear statement of the whole occurrence. Then there is the extra judicial confession of all the accused persons before Manga and Inayat witnesses. Only a few hours after the occurrence the accused persons confessed before Manga and Anayat the manner in which they had killed Bag Ali and *Mst.* Makhni on account of their misdeeds. No reason has been shown as to why the evidence of Manga and Anayat should not be believed.

The accused persons have been rightly convicted and the punishment is not excessive. The appeals of all the three appellants are dismissed. They shall be informed of this order in jail.

Appeals dismissed.

———

39 P. L. R., J. & K., 19.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom,
and Mr. Justice Janki Nath Wazir.

Dewan SITA RAM *versus* *Sardar* KISHAN SINGH

First Civil Appeal No. 109 of 1993.

Jammu, 13th February 1937.

According to section 106 of the Transfer of Property Regulation, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year provided there is no specific contract to the contrary between the parties. When a specific contract to the contrary exists section 106 will not apply and the nature of the tenancy shall be determined from the terms of that contract.

The issue of a six months notice will be necessary only when the tenancy is found to be a tenancy from year to year.

The mere fact that the landlord accepted rent for the whole year in respect of the tenancy is not by itself sufficient to show that the tenancy is from year to year.

Similarly the fact that the tenant has been in possession of the tenancy for a number of years is not itself sufficient to show that the tenancy is one from year to year.

Appeal against the order of District Judge, Jammu, dated 32nd *Jeth* 1993.

Messrs. A. R. Oswal, Harbans Bhagat and *Amolak Ram.*

Messrs. C. Rai and *Chaman Lal.*

JUDGMENT.

The Plaintiff instituted a suit for the ejectment of the defendant from 42 *kanals* and 13 *marlas* of land and for the recovery of Rs. 380 for the unauthorized use and occupation of the land. The plaintiff's claim was that by virtue of a rent deed dated 30th *Jeth* 1988 the lease of the land was given to the defendant for two years 1988 and 1989 on a yearly rental of Rs. 825. After the expiry of samvat year 1989 the defendant continued in possession of the land for another year *i. e.* for the year 1990 and the rent Rs. 825 for the year 1990 was received from him. At the end of 1990 a notice was given to the defendant by the plaintiff that he should vacate the land and that if it was not done rent would be charged at the rate of Rs. 300 per month. The defendant did not vacate the land and so the present suit was instituted on 9th *Jeth* 1991. The defendant admitted the execution of the deed dated 30th *Jeth* 1988 but

pleaded that it had been obtained by the plaintiff for some other purpose. He also pleaded that the land was used for the purpose of a brick kiln and that according to a special commercial custom prevailing in Jammu he could not be ejected from the land so long as he continued to pay rent for it. The trial court decreed the plaintiff's suit but allowed him rent for the unauthorized period at the rate of Rs. 825 *p. a.* and not at the rate of Rs. 300 per month as claimed by the plaintiff. Against this decree both the parties filed appeals in the District Court. The learned District Judge held that the tenancy was from year to year and so according to section 106 of the Transfer of Property Regulation the issue of a six months notice was necessary and as such a notice was not issued the suit was not tenable. The learned District Judge therefore dismissed the plaintiff's suit. The plaintiff has now come in second appeal to this court.

Very lengthy arguments have been addressed in the case and certain matters were touched which had no direct bearing with the case. The tenancy is not denied by the defendant. The only dispute between the parties is as to what is the nature of the tenancy. It is laid down under section 106 of the Transfer of Property Regulation that in the absence of a contract or local law or usage to the contrary a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year terminable, on the part of either lessor or lessee by a six months notice expiring with the end of a year of the tenancy. It is admitted that the land was used for manufacturing purpose so according to section 106 of the Transfer of Property Regulation the lease shall be deemed to be a lease from year to year provided there is no contract to the contrary. In the present case we find that there is a contract to the contrary. The execution of the rent deed dated 30th *Jeth* 1988 is not denied by the defendant. In this deed it was specifically laid down that the lease was for a fixed period of two years. It is urged by the respondent's counsel that when at the expiry of samvat 1989 when the two years' lease determined the plaintiff accepted one year's rent of Rs. 825 from the defendant the tenancy was converted into a tenancy from year to year. But this contention is not tenable. The learned counsel has not been able to cite any authority in support of this contention. On the other hand it has been held by various British Indian High Courts that the mere payment of yearly rent does not

make the tenancy as a tenancy from year to year. Reference in this connection may be made to *26 Indian Cases page 962* and *44 Calcutta page 214*. It was held in both these rulings that the fact that the rent is fixed at so much a year does not conclusively show that the tenancy is from year to year.

The lower appellate court was not justified in going beyond the pleadings of the parties. The defendant never pleaded that his tenancy was a tenancy from year to year. All that he pleaded was that according to a special commercial custom he could not be ejected from the land so long as he continued paying the rent to the plaintiff. But the existence of any such custom was not proved by the defendant.

It has also been argued by the respondent's learned counsel that as the defendant respondent has held the land for a considerable period, first as a partner with one Chuni Lal and then exclusively in his own name since samvat 1984 the lease may be presumed to be one from year to year. This argument also is not tenable. Even in the lease deeds executed by Chuni Lal it is no where stated that the lease would be as one from year to year. In the deed executed by Chuni Lal on 7th *Chet* 1980 it is clearly stated that the lease would be for one year only. The same period of one year was mentioned in some previous deeds executed by Chuni Lal in regard to the land. Then in the rent deed executed by the defendant on 30th *Jeth* 1988 the period of lease is definitely fixed to be two years. In *1926 Calcutta page 1239* and *1934 Madras page 458* it was held that when a lessee holds over after the expiry of the lease he must be considered to hold on the terms stipulated for in the original lease. In the present case according to the admission of both the parties the original deed executed between the parties in regard to the lease was the document of 30th *Jeth* 1988. In this document the period of lease is definitely stated to be two years. So the mere fact that the defendant continued to hold on after the expiry of the original lease does not convert the tenancy into a tenancy from year to year.

It is urged on behalf of the appellant that as the defendant behaved in a contumacious manner in not vacating the land after the expiry of samvat 1990 he should be made to pay at least double the rent which was originally fixed *i. e.*, double of Rs. 825 per annum. We do not think that in the circumstances of the case the rate of rent as originally agreed to between the parties should be enhanced.

We hold that the tenancy in the present case was not a tenancy from year to year and as such the issue of a six months notice as required by section 106 of the Transfer of Property Regulation was not required. We therefore accept this appeal and setting aside the decree of the lower appellate court restore that of the trial court. The defendant shall pay to the plaintiff costs throughout.

Appeal accepted.

---

39 P. L. R., J. & K., 22.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

AMINCHAND *versus* BILOO AND OTHERS.

Civil 1st Appeal No. 98 of 1993.

Jammu, 22nd *Poh 1993.*

Where the father of a minor is alive and is willing to look after the minor, then in his presence nobody else can be appointed a guardian of the minor according to section 19 (b) of the Guardian and Wards Regulation.

Appeal against the order of Additional District Judge, Jammu, dated 9th *Sawan* 1993.

Mr. Ram Nath Langer.

Mr. Kishori Lal.

JUDGMENT.

Rampiari is a minor girl of about 7 years of age and the present dispute is about the appointment of her guardian. The lower court appointed one Biloo, a maternal uncle of the girl, as her guardian. In this appeal it is urged that the father of the girl, Khushala is still alive and is willing to look after the girl and so in his presence nobody else can be appointed a guardian of the girl according to Section 19 (b) of the Guardian and Wards Regulation. In his statement in the lower court Biloo admitted that Khushala was the father of the minor girl. Khushala is present in the court today and he definitely states that he will himself look after the girl and that nobody else should be appointed as her guardian. As the father of the girl is willing to look after the girl, there seems to be no necessity of anybody else being appointed a guardian. The order of the lower court appointing Biloo as guardian of the girl is therefore set aside. The girl shall be restored to her father Khushala who will look after her. The parties shall bear their own costs throughout.

---

39 P. L. R., J. & K., 23.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice Janki Nath Wazir.

FIRM MADHOLAL-DURGA DAS *versus* MOHD. DIN.

Civil 2nd Appeal No. 19 of 1993.

Jammu, 10th *Magh* 1993.

Execution court has no power to alter or vary decree under execution and to substitute a new decree for it. Mere consent of parties cannot confer such jurisdiction on the executing court.

Appeal against the order of Additional District Judge, Jammu, dated 16th *Har* 1993.

Mr. Ladha Singh, Advocate.

Mr. Rup Chand Nanda.

JUDGMENT.

On 12th *Jeth* 1982 a decree for Rs. 276-4 was passed against the estate of one Lal Din deceased. The execution was taken out in samvat 1986 against Lal Din's son Mohd. Din but the latter's liability for the decree was obviously only up to the extent of the preperty he had inherited from his deceesed father Lal Din. During the execution proceedings on 6th *Jeth* 1987 Mohd. Din was prevailed upon by the decree-holder to enter into a compromise by which Mohd. Din accepted a personal liability for the decree which had been passed on 12th *Jeth* 1932 against the estate of Lal Din. After this compromise some payments were made by Mohd Din but for the payment of the balance the decree holder applied to the executing court on 21st *Phagan* 1991 to issue a warrant of arrest against Mohd. Din. On 21st *Poh* 1992 the executing court directed issue of a warant against the judgment-debtor. Against this order an appeal was filed in the District court and that court set aside the order of the executing court dated 21st *Poh* 1992 and declared that the original decree passed in 1982 could only be executed up to the extent of the property which was in the possession of Mohd. Din and that Mohd. Din was not personally liable for that decree. Against this order of the District court the decree-holder filed a further appeal in this court.

The first objection urged by the respondent's counsel was that this appeal was not competent. The appellant's counsel accepted this objection and requested that the appeal

may be treated as an application for revision. So this has been heard as an application for revision.

After hearing the counsel for the parties we see no reason to interfere in revision in the judgment of the lower appellate court. It has been urged on behalf of the applicant decree-holder that when the judgment-debtor himself accepted personal liability in regard to the original decree there should be no objection to execution proceedings being taken against the person of the judgment-debtor. On the other side it is urged that the executing court had absolutely no authority to alter or vary in 1987 a decree which was passed in samvat 1982 and in support of this contention reference has been made to *1932 Allahabad 273, 1933 Peshawar 53* and *1934 Oudh 465*. In *1932 Allahabad 273* it was held by the Full Bench of the Allahabad High Court that an executing court has no power to alter or vary the decree in execution and to substitute a new decree for it. The mere consent of the parties cannot confer such jurisdiction on the executing court. We are in full agreement with the views expressed in the above rulings. The execution can be taken out only of the decree as it was passed on 12th *Jeth* 1982 and it is not open to the executing court to alter or vary the decree even with the consent of the parties. The revision application is dismissed with costs.

Application dismissed.

---

39 P. L. R., J & K. 24

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice
and Mr. Justice K. L. Kichlu.

FARMANA *versus* STATE.

Criminal First Appeal No. 12 of 1993.

Jammu, 22nd *Poh* 1993/5th January 1937.

Where the accused came behind the deceased who was returning from the village burial ground along with other persons and inflicted a severe blow on the back of the deceased's neck with a hatchet:

Held, that, when a person causes a severe injury to another person with a sharp-edged weapon on a vital part of the body and that injury results in death it will be supposed, in the absence of special circumstances to the contrary, that the person who caused the injury intended to kill the person injured and the offence falls under section 302 of the Ranbir Penal Code.

Appeal against the order of Sessions Judge, Jammu, dated 13th *Maghar* 1993.

Mr. Chaman Lal, Advocate, Amicus curiae.
Government Advocate.

JUDGMENT.

The accused has been convicted by the Sessions Judge Jammu under section 302 of the Ranbir Penal Code and sentenced to life imprisonment subject to confirmation by His Highness the Maharaja Bahadur. This is an appeal against that conviction and sentence.

The facts of the case are quite simple and are not denied by the appellant himself. On the morning of 11th *Assuj* 1993 Mangta and certain other persons were returning from the village burial ground. While they were all walking the accused Farmana came from behind and inflicted a severe blow on the back of Mangta's neck with a hatchet. The hatchet remained in Mangta's back for some time and it was afterwards taken out by one of Mangta's companions Atta Mohammad. The accused was caught on the spot and Mangta was placed on a *charpai* and sent to the Police Station which is at a distance of three miles from the place of occurrence. Mangta was sent to the hospital that very day and his statement was recorded by a Magistrate. Again on 21st *Assuj* 1993 Mangta's statement was recorded in the court of the committing Magistrate. In both these statements Mangta definitely stated that the injury was caused to him by the accused. Mangta died in the hospital on 24th *Assuj* 1993.

The accused appellant appeared before us today and he admitted before us that he struck Mangta deceased with a hatchet. His plea is that as Mangta owed him Rs. 20 and would not return that amount to him he struck Mangta with the hatchet. According to the deceased there was a quarrel a few days before the occurrence between Mangta and the accused's nephew Ghulam Rasool over the grazing of Ghulam Rasool's cattle in Mangta's field and at that time abuses were exchanged between the parties. The accused wanted to take his revenge on Mangta and it was with this object that the accused attacked Mangta with the hatchet. But whatever the motive was the fact remains that a severe blow was inflicted by the accused on the back of Mangta with a hatchet. It is urged by the appellant's learned counsel that the accused had no intention to kill Mangta and so the offence does not fall under Section 302 of the Ranbir Penal Code but falls under Section 304 (2) of the Ranbir Penal Code. We do not agree with this view. The intention of a person can only be judged

from the nature of his act. In the present case the accused inflicted such a severe blow with his hatchet on Mangta's back that it cut not only the shoulder of the victim but the ribs and also a portion of the right lung. According to the Medical Officer who conducted the post mortem examination a gasping wound 2½" long and 2" wide was found at the back of the neck cutting down all the structure up to the lung—cutting the ribs and opening up the plural cavity. According to the Doctor the death was due to septic intoxication with the septic pneumonia of the right lung. When a person causes a severe injury to another person with a sharp edged weapon on a vital part of the body and that injury results in death, it will be supposed in the absence of special circumstances to the contrary, that the person who caused the injury intended to kill the person injured. In the present case the manner in which the attack was made by the accused person also indicates that the accused wanted to take other man's life. The accused did not contemplate a mere fight with the deceased person, as he did not come to attack him from the front. On the other hand what the accused did was to go quietly behind his victim and attack him unawares with a sharpedged weapon when the other man was not even in a position to defend himself. In our opinion this is a clear case of murder and the accused has been rightly convicted under Section 302 of the Ranbir Penal Code. The appeal is dismissed.

The record of the case shall be submitted to His Highness the Maharaja Bahadur with the humble request that the sentence of life imprisonment passed on Farmana accused be confirmed.

Appeal dismissed.

---

39 P. L. R., J. & K., 26.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

GUFFAR MIR *versus* STATE.

Criminal 1st Appeal No. 10 of 1993.

Jammu, the 15th *Poh* 1993.

There was discrepancy in the first information report and the dying declaration of the deceased and the prosecution evidence in regard to the place where the offence was committed and also in regard to the motive with which it was committed.

Held, that, these discrepancies were immaterial so long as it was satisfactorily established that the offence in question was actually committed by the accused person.

Appeal against the order of Sessions Judge, Kashmir, dated 4th *Maghar* 1993.

Mr. Ladhasingh, Advocate, Amicus Curiæ.

Government Advocate.

JUDGMENT.

The accused Guffar Mir has been convicted by the Sessions Judge Kashmir under section 302 of the Ranbir Penal Code and sentenced to life imprisonment subject to confirmation of the sentence by His Highness the Maharaja Bahadur. Against this conviction and sentence the accused has filed an appeal in this court. The learned Sessions Judge has also made a reference for the confirmation of the sentence of life imprisonment passed on the accused. This judgment will govern the decision of the appeal as well as of the reference.

The case as put forward by the prosecution is as follows. The accused Guffar Mir had illicit connection with *Mst.* Azizi wife of Sikandar Mir. About noon on 13th *Har* 1993 when Sikandar Mir had gone out to work in the fields and *Mst.* Azizi was alone in the house, the accused Guffar Mir entered *Mst.* Azizi's room on the first floor by climbing through a window and from there took *Mst* Azizi to the cattle shed on the ground floor. In the cattle shed Guftar Mir started committing adultery with *Mst.* Azizi. By some accident Sikandar Mir returned to his house and as he heard some sound coming from the cattle shed he looked into it through the door which was ajar. There he saw Guffar Mir committing adultery with his wife and upon that he started abusing Guffar Mir. Guffar Mir caught hold of a hatchet which was lying in the cattle shed and with that hatchet inflicted several blows on the head of Sikandar Mir. Sikandar Mir fell down and Guffar Mir first went to the upper room of the house with the hatchet and then jumped out of the window. The hatchet was left in the upper room. *Mst.* Azizi raised a hue and cry and upon that her uncle Jamal Mir came to the spot. Jamal Mir found Sikandar Mir lying in a pool of blood near the door of the cattle shed. Jamal Mir asked Sikandar Mir as to what had happened. Sikandar Mir told Jamal Mir that he had been struck by Guffar Mir. *Mst.* Azizi's father Ahmad Mir who is a surbrah lambardar also came to the spot and while he was coming he saw the accused Guffar Mir jumping out of the window of

Sikandar Mir's house and running away. Some more people collected on the spot and in the evening Sikandar Mir was placed on a charpai and taken to Uttermachhipura, a distance of about eleven miles from the scene of occurrence. The party stopped somewhere on the way in the night and a report was made in the Uttermachhipura Police station at about 6-15 on the morning of 14th *Har* 1993. Sikandar Mir was unconscious at that time and so the report was given to the Police by *Mst.* Azizi's brother Habib Mir. It was stated that the injuries on the person of Sikandar Mir were caused by Guffar Mir. A little later Sikandar Mir regained consciousness but as his condition was very serious the Sub-Inspector of the Police sent for the Tehsildar Magistrate Uttermachhipura Pandit Balbhadar Koul to record the dying declaration of Sikandar Mir. Sikandar Mir stated before the Tehsildar that he had been struck by Guffar Mir with the hatchet on account of some enmity regarding land. After that Sikandar Mir was sent to the State Hospital at Langate where he died on 17th *Har* 1993. The body was sent to the Baramula hospital for *post mortem* examination. According to the Medical Officer who conducted the *post mortom* examination of the deceased several grievous injuries were found on the head of the deceased and in the opinion of the Medical Officer the death of the deceased was due to these head injuries. The accused Guffar Mir was arrested on 18th *Har* and was sent up to stand his trial on the charge of murdering Sikandar Mir. The accused pleaded *alibi* and denied all knowledge of the occurrence. He pleaded that at the time when the occurrence took place he was working in the fields and never went near Sikandar Mir's house.

It is admitted by the appellant's counsel that the deceased Sikandar Mir met with a violent death due to the injuries which he received on his head. So the only point which now remains to be determined is as to who caused those injuries on the head of the deceased. The learned counsel for the appellant suggested that there was perhaps some sort of altercation between Sikandar Mir and some other members of his family and that the injuries found on the head of Sikandar Mir were caused during that altercation. This suggestion is a mere conjecture on the part of the learned counsel. There is absolutely no evidence on the file to show that any altercation of any sort took place on that day between Sikandar Mir and any member of his family.

On the other hand there is overwhelming evidence on the file to show that the injuries found on the head of Sikandar Mir were caused by Guffar Mir accused. In the first place there are two declarations made by the deceased himself. The first declaration was made when Jamal Mir reached the spot immediately after the occurrence and he was definitely told by Sikandar Mir that he had been struck by Guffar Mir accused. Then there was the dying declaration of Sikandar Mir before the Tehsildar Magistrate Handwara on the 14th *Har* 1993. There also Guffar Mir was definitely described as the assailant of Sikandar Mir. It will be noted that in this case there was absolutely no time for anybody to concoct a false story. From the very moment of the occurrence the accused Guffar Mir was definitely mentioned as Sikandar Mir's assailant. *Mst.* Azizi is an important witness of the case and she also named Guffar Mir as the person who had caused the injuries to Sikandar Mir and described the manner in which those injuries were caused. It is in evidence that *Mst.* Azizi had been carrying on an unlawful connection with Guffar Mir for some time and so there was no reason for her to falsely implicate her own paramour if he was innocent and injuries were caused by somebody else. Besides this there is evidence of several persons who saw Guffar Mir accused running away from the house of Sikandar Mir immediately after the occurrence. *Mst.* Azizi's father Ahmad Mir lambardar came to the spot soon after and he actually saw Guffar Mir jumping from the window and running away. Mohd. Mir witness also saw the accused running away from Sikandar Mir's house.

It is urged on behalf of the appellant that the first information report made to the Police by *Mst.* Azizi's brother Habib Mir and the dying declaration of Sikandar Mir recorded by the Tehsildar Magistrate Uttermachhipura contradict the prosecution story now put forward that the incident took place after Sikandar Mir had seen the accused Guffar Mir committing adultery with his wife in the cattle shed on the ground floor. It is true that in the first information report given by Habib Mir and in the dying declaration the motive for the assault was given as enmity in connection with some land and no mention was made of illicit connection between the accused Guffar Mir and *Mst.* Azizi or of the fact that they were both seen committing adultery before the assault was made on Sikandar Mir. But the reason for not mentioning the fact of

Mst. Azizi's adultery in the first information report as well as in the dying declaration of Sikandar Mir is obvious. *Mst.* Azizi is a daughter of the local lambardar Ahmad Mir and so it appears that an attempt was made to save the honour of the woman if possible. Habib Mir was naturally shy to mention the fact of his sister having committed adultery witn Guffar Mir accused and similarly Sikandar Mir wanted to save the honour of his wife if possible. But whatever the motive might have been it is clear from the evidence in the present case that injuries found on Sikandar Mir were actually inflicted by the accused Guffar Mir and so in a case like this the question of motive becomes immaterial.

It is also stated on behalf of the appellant that the first information report and the dying declaration of Sikandar Mir recorded by the Tehsildar Magistrate do not tally with the present prosecution story in regard to the exact place where the offence was committed. In the first information report and in the dying declaration it was stated that the deceased was struck by the accused with a hatchet while the deceased Sikandar Mir was sleeping in his room in the upper storey, while according to the present prosecution story the offence was committed at the door of the cattle shed on the ground floor. This point is intimately connected with the question of motive referred to above. When an attempt was made to supress the fact that the accused and *Mst.* Azizi were committing adultery in the cattle shed on the ground floor it was obvious that it could not be stated in the beginning that the offence had been committed near the door of the cattle shed. But it has been fully established by the evidence of the Sub-Inspector who investigated the case and the other witnesses that the offence of murder was actually committed at the door of the cattle shed on the ground floor. It was at this place that is near the door of the cattle shed that blood was found in a very large quantity by all the witnesses who went to the spot.

We have carefully examined the record and we are fully convinced that the injuries on the head of Sikandar Mir deceased were caused by Guffar Mir accused and we therefore uphold his conviction under section 302 of the Ranbir Penal Code. The appeal filed by the appellant is dismissed.

The record of the case shall be submitted to His Highness the Maharaja Bahadur with the humble request that the sentence of life imprisonment passed on Guffar Mir accused be confirmed.

39 P. L. R. J & K. 31.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

FAKIR CHAND *versus* STATE.

Criminal 2nd Appeal No. 9 of 1993.

Jammu, 17th *Poh* 1993.

A girl went to bazar to sell grass. The accused approached the girl, made her believe that he wanted to purchase her load of grass and took the girl with him. The accused ultimately took the girl to the house of somebody else and there he wanted to commit adultery with her. The girl raised hue and cry.

Held, that, an offence under section 366 of the Ranbir Penal Code was established against the accused person.

Appeal against the order of Sessions Judge, Jammu, dated 15th *Assuj* 1993.

Mr. Amar Das, Advocate of Sialkote.

Government Advocate.

JUDGMENT.

The Sub-Divisional Magistrate Udhampur convicted the accused Faqir Chand under Sections 366 and 451 of the Ranbir Penal Code and sentenced him as follows :—

Under Section 366 one year's rigorous imprisonment and a fine of Rs. 100.

Under Section 451 three months' rigorous imprisonment and a fine of Rs. 50.

On appeal the learned Sessions Judge Jammu set aside the conviction under Section 451 but upheld the conviction and sentence under Section 366 of the Ranbir Penal Code. The accused has now come in further appeal to this court.

The facts of the case are quite simple. During day time on 1st *Chet* 1992, *Mst.* Maltoo, a young married girl of about 18 years of age went to Udhampur bazar to sell grass. The accused approached her and offered four annas for her load of grass. The girl accepted and the accused took her along with him. The accused first told the girl that the grass would be taken to the Police station but afterwards he told her that the load would be taken to the warder's house nearby. The accused then took the girl with the load of grass in the quarters of Hari Chand, Head warder, and when the girl entered the quarters the accused chained the door of the quarters from inside. The accused attempted to commit adultery with the girl and upon that the girl started crying and made noise which attracted the attention of Mohd. Hussain, a warder on duty at the

Sub Jail Udhampur. Mohd. Hussain informed the other warders of the noise coming from the quarters of Harichand, head warder, and upon that they all went inside the house and found the accused and the girl inside the quarter. The girl was still crying at the time. As the door of the house was chained from inside the warders had to get into the house by climbing over the walls. In this appeal an attempt has been made to show that the accused did not take the girl to warder's house by any fraud or deceptive means but that the girl went there of her own free will for the purposes of prostitution. There is nothing on the file to substantiate this plea. On the other hand there is overwhelming evidence to show that the girl was taken to the quarters by deception and that the accused wanted to commit adultery with her against her wishes In the first place there is confession of the accused himself before Dina Nath Compounder and that statement itself nagatives any idea that the girl went to the quarters of the head warder of her own free will. Then there is the very clear evidence of the girl herself and no reason has been shown as to why her statement should not be relied upon. She gives a very clear account of the occurrence from the beginning to the end. In the first place it is important to note that there were absolutely no cattle in the quarters of Harichand head warder and so there was absolutely no necessity for the accused to take the girl into those quarters with a load of grass. It is thus clear that from the very moment when the accused approached the girl in the bazar he had sinister intention against her and his object in taking her to the quarters was only to commit adultery with her. Then there was no object in the accused chaining the door from inside when the girl entered the house if the object was simply to purchase the grass. Then it is clear that it were simply the cries of the girl which attracted the attention of the outsiders to the place where the girl was being forced to sexual intercourse with the accused. If the girl was a willing party there was no accasion for her to raise a hue and cry and without her raising a hue and cry it is possible that no body might have known of the affair. But the fact that cries were made by the girl is clear even from the defence evidence.

It has also been urged by the appellant's learned counsel that an attempt was made by some of the prosecution witnesses to screen Harichand head warder in whose quarters the girl was taken and that as the full facts of the case were not disclosed by the prosecution witnesses their evidence should

not be relied upon. Whatever the intention of some of the prosecution witnesses might be, the evidence so far as it goes in regard to the part played by the accused Faqir Chand is quite clear and fully establishes the guilt against the accused person. There is however no doubt that Harichand head warder has told a deliberate lie when he stated in the trial court that he was totally stranger to the accused person and never knew him before. There is evidence on the file to show that the accused and Harichand were intimate friends and that the accused would never have dared to take the girl in broad day light in Harichand's quarters if Harichand was a total stranger to him Harichand's conduct has been found to be very reprehensible in the case and it is a matter for the Jail authorities to decide whether a man of that kind is fit to remain in public service. A copy of this judgment together with a copy of the Sessions Judge's judgment shall be sent to the Hon'ble Minister in charge of the Jail department for such action as may be considered necessary

An offence under section 366 of the Ranbir Penal Code has been fully established against the accused appellant and in view of the disgraceful nature of the offence the punishment awarded is not excessive. The appeal is dismissed. The appellant shall be informed of this order in Jail.

Appeal dismissed.

---

39 P. L. R., J. & K., 33

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice Janki Nath Wazir.

PARTAB SINGH *versus* RATAN SINGH AND ANOTHER.

Civil Revision No. 10 of 1933 A. R. R.

Jammu, the 28th *Magh* 1993.

Agreement to finance litigation can be enforced provided the terms of the agreement are neither unconscionable nor extortionate.

Revision against the decree of Subordinate Judge, Kathua, dated 20th *Bhadoon* 1993.

Mr. Chaman Lal, Advocate.

Mr. Mela Ram, Vakil.

JUDGMENT.

Rattan Singh and Jamrood Singh plaintiffs filed a suit under the provisions of the Agriculturists Relief Regulation against Partab Singh for the recovery of Rs. 379 which they

had advanced to the defendant under an agreement dated 31st *Har* 1988, in the court of the Subordinate Judge Kathua. The plaintiffs admitted having received Rs. 70 from the defendant and prayed for a decree to be passed in their favour for Rs. 309. The defendant admitted the execution of the agreement and the money received under that agreement but pleaded that the money was advanced for filing a suit for possession against Miyan Singh which the defendant had done. But as the plaintiffs failed to pay the expenses for prosecuting an appeal filed by the appellant Miyan Singh there was therefore a breach of the agreement on the part of the plaintiffs and they were not entitled to recover the amount advanced to the defendant. The defendant further pleaded that the agreement between him and the plaintiffs was champertous and the plaintiffs could not recover the money advanced. The trial court struck the following issues:—

1. Whether the plaintiffs contrary to the agreement of 31st *Har* 1988 failed to pay the expenses of prosecuting the appeal to the defendant and the defendant could not prosecute the appeal? On the defendant.

2. Did the defendant enter into a compromise with the appellants due to lack of funds? On the defendant.

3. Whether the defendant was bound by the terms of the agreement dated 31st *Har* 1988? On the defendant.

The trial court after going through the evidence produced by the parties came to the conclusion that the defendant is bound by the agreement and the plaintiffs are entitled to recover Rs. 309 from the defendant. The defendant has come up in revision to this court.

The defendant produced evidence but failed to prove that he could not prosecute the appeal merely because he had no funds and that the plaintiffs refused to offer any pecuniary help He entered into compromise with the appellants which was certainly contrary to the agreement entered into by him with the plaintiffs. The terms of the agreement clearly state that the plaintiffs shall finance the defendant in a suit for possession against Miyan Singh and if the defendant failed to win the suit the plaintiffs would not be entitled to recover the amount thus spent on the suit, but if the defendant won the case he shall transfer the possession of the land in favour of the plaintiffs. The agreement further stated that if the defendant compromised with Miyan Singh he shall pay the ex-

penses of the suit together with Rs. 500 as damages to the plaintiffs. The defendant entered into a compromise with Miyan Singh in the appeal stage. There is no satisfactory evidence on the record to show that the plaintiffs failed to provide the defendant with necessary funds for prosecuting the appeal. I am therefore of opinion that the trial court has rightly found on this issue against the defendant. Another point urged before me by the counsel for the petitioner was that the agreement was champertous and not binding upon the defendant. It has been held in various cases that an agreement to finance litigation can be enforced if the terms are not extortionate and unconscionable. There is absolutely no evidence to show that the agreement is extortionate or un-conscionable. The plaintiffs agreed to finance the defendant for getting back the possession of the land to which he was entitled. The suit for possession to the extent of 1/4th was decreed in favour of the defendant. It is evident that he was entitled to the 1/4th possession of the land. The defendant contrary to the agreement entered into by him with the plaintiffs compromised in appeal. The plaintiffs respondents did not press for damages for the breach of the agreement but merely prayed for the return of the money which they had advanced to the defendant for filing the suit. I think the plaintiffs respondents were entitled to recover the amount advanced on the basis of the agreement and the trial court has rightly decreed the amount in favour of the plaintiffs. I see no force in this revision and dismiss it with costs.

Revision dismissed.

---

39 P. L. R., J. & K., 35.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

HABIB *versus* STATE.

Criminal First Appeal No. 7 of 1993.

Jammu, 22nd *Poh* 1993.

Consent of a minor is no defence in a case under section 366 of the Ranbir Penal Code. The plea of the accused that the girl went with him and remained with him of her own free will is of no avail where the girl is minor.

Also that an offence under section 366 of the Ranbir Penal Code is an aggravated form of an offence contemplated by section 363 and so the accused person cannot be convicted

both under section 366 and also under section 363 of the Ranbir Penal Code for the same act.

Appeal against the order of Magistrate 1st Class, Rajouri, dated 25th *Sawan* 1993.

Government Advocate.

JUDGMENT.

The accused appellant has been convicted by the Munsiff Magistrate Rampur Rajouri under sections 363 and 366 of the Ranbir Penal Code and sentenced to two years rigorous imprisonment under section 363 and three years rigorous imprisonment under section 366. The sentences are to run consecutively Against these convictions and sentences the accused has filed an appeal from the jail.

On the night between 12th and 13th *Jeth* 1993 a young girl *Mst.* Reshman was taken away by the accused from her father's house. The accused took the girl from place to place until he was arrested on 24th *Har* 1993 and the girl found with him. The plea of the accused was that the girl went with him and remained with him of her own free will. This plea is of no avail to the accused as according to the Medical evidence the girl *Mst.* Reshman is under 16 years of age. Her consent even if given is therefore immaterial in the case. There is however evidence on the file to show that the girl was forcibly taken away by the accused from her house and the fact that the accused committed adultery with the girl is admitted by the accused himself.

The learned Government Advocate frankly admitted that in a case like this the accused could only be convicted under section 366 of the Ranbir Penal Code and could not be convicted of a minor offence under section 363 for the same act. This is quite correct. In the charge sheet itself only one charge has been made against the accused and that is of abducting *Mst.* Reshman from her father's house for purposes of illicit intercourse. It is obvious that for the same offence the accused could not be convicted both under section 363 and under section 366. The case clearly falls under section 366 of the Ranbir Penal Code and we uphold his conviction and sentence under that section. The conviction and sentence of the accused under section 363 of the Ranbir Penal Code are set aside. The appeal is accepted only to the extent indicated above.

Appeal partly accepted.

39 P. L R. J. & K. 37.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

SAWAN, DITTOO *versus* STATE.

Criminal Second Appeals Nos. 32 and 34 of 1993.

Jammu, 23rd *Poh* 1993.

Where a girl who is not a minor, leaves her husband's house of her own free will and goes to the accused:

Held, that, no offence under section 366, Ranbir Penal Code, is committed.

Appeal against the order of Additional Sessions Judge, Jammu, dated 13th *Assuj* 1993.

Government Advocate.

JUDGMENT.

Sawan and Dittoo have been convicted under section 366 of the Ranbir Penal Code and sentenced to 3½ year rigorous imprisonment and a fine of Rs. 20 each. They first appealed to the Sessions Court but the appeals were dismissed. They have now filed separate appeals in this court from the jail. This judgment will govern the decision of both the appeals.

On the night between 24th and 25th *Phagan* 1992 *Mst.* Rajan, a married woman who is said to be above 17 years of age disappeared from her husdand's house. The girl was subsequently found with Dittoo accused in Rakh Bahu on 3rd *Baisakh* 1993 when a case was started against both the accused persons. The girl's version was that at about mid night on 24th *Phagan* 1992 she went out of her house to give fodder to the cattle outside. When she went out the accused Sawan was sitting there and he quitely asked the girl to go along with with him as her brother was dangerously ill. Thereupon the girl without informing her husband or the other inmates of the house who were sleeping inside quietly went along with the accused Sawan who took her to his own house. The girl remained in Sawan's house for about a month and afterwards she was taken to the house of one Hiru in village Kah near Udhampur. There the girl met with other accused Dittoo and according to the girl's statement both the accused persons used to visit her in that house for some time. Afterwards Dittoo told the girl that she was wanted at Jammu by Sawan accused and so the girl came to Jammu along with Dittoo. From Jammu the girl was taken by Dittoo to Bahu Rakh where they were both caught.

The learned Government Advocate frankly admitted in the very beginning that in view of the circumstances of the case the conviction of the accused persons could not be supported. The girl is clearly not a minor. She admitted that before leaving her husband's house on the night of 24th *Phagan* 1992 she had previous illicit connection with Sawan accused and used to meet him from time to time. In the circumstances in which the girl left her husband's house it is thought that she left the house of her husband of her own free will. Otherwise if she was not a consenting party she had not business to quietly go with Sawan out of her house in the middle of the night. Her husband, her father-in-law and her mother-in-law were all inside the house and even if she wanted to go along with Sawan on account of her brother's illness it was necessary for her to take the permission of her husband and the other inmates of the house. Curiously enough she quietly went away with Sawan in the dead of night without informing anybody in the house. This shows that the girl who had previous illicit connection with Sawan wanted to go with him of her own will. Then she remained in Sawan's house for about a month and after that for some time in Hira's house but she made absolutely no attempt to go back to her husband's house or to inform anybody that she had been abducted by Sawan. Then when the girl met Ditto accused she became very friendly with him and started illicit connection with him as well. Then according to the girl's own statement when she came to Jammu with Dittoo they took food in a shop in Jammu where other people also came but she informed nobody that she was being taken by Ditto against her wishes. Similarly when Ditto and the girl crossed the river Tawi in a boat there were a number of other people in the boat but she did not inform anybody that she was being taken against her will. So from the conduct of the girl herself it appears that she was a consenting party throughout and in the circumstances the conviction of the accused persons under Section 366 of the Ranbir Penal Code cannot be upheld. I therefore accept both the appeals and setting aside their conviction acquit both the accused persons Sawan and Dittoo. They shall be released forthwith, and if they have paid any fine that shall be refunded to them. A copy of this order shall immediately be sent to the Superintendent Jail.

39 P. L. R., J. & K., 39.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice
and Mr. Justice K. L. Kichlu.

GOKAL CHAND *versus* *Mst.* ROMALO,
Mst. BUNDAN.

Civil Second Appeal No. 15 of 1993.

Jammu, 10th March 1937.

Any custom which is clearly against public morals should not be recognized by a court of law.

Appeal against the order of District Judge, Jammu, dated 16th *Bhadon* 1993.

Mr. Chaman Lal.

Mr. Dina Nath.

JUDGMENT.

The plaintiff instituted a suit for the restitution of conjugal rights in respect of defendant No. 1 *Mst.* Romalo. The trial court decreed the plaintiff's suit but on appeal the learned District Judge of Jammu set aside the decree and dismissed the plaintiff's suit. The plaintiff has now come in second appeal to this court. After examining the record we see no reason to interfere in the finding of the lower appellate court. The plaintiff did not allege any marriage or Chadar Andazi with *Mst.* Romalo but merely claimed that as he had paid a certain amount of money to *Mst.* Romalo's mother he was entitled to keep *Mst.* Romalo as his wife according to the custom of the illaqa in which the parties lived. In the first place no such custom has been satisfactorily established by the plaintiff, but even if the existence of any such custom was proved that custom being against public moral cannot be acted upon. Any custom which is clearly against public moral cannot be recognized by a court of law. There can be no doubt that a custom by which the girls can be purchased as shop goods is clearly against public moral and cannot be countenanced. The same view was taken by this court in case *Phissu* v. *Mst. Thimo* decided on 23rd *Phagan* 1992 and also in case *Mst. Noori* v. *State* published in the Jammu and Kashmir Rulings 402.

It was admitted by the plaintiff in the present case that *Mst.* Romalo was at first the wife of one Phulla. When *Mst.* Romalo left her first husband the plaintiff started illicit connection with her and that illicit connection continued for some time. The fact of this illicit connection was admitted

by *Mst.* Romalo also It appears that when the girl refused to continue the illicit connection the plaintiff instituted the present suit to bring pressure upon her.

The appeal is dismissed with costs.

Appeal dismissed.

---

39 P. L. R. J. & K. 40.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu and Mr. Justice J. N. Wazir.

RUKIN DIN *versus* *Mst.* BARKAT BIBI.

Civil First Appeal No 80 of 1993.

Jammu, 30th *Magh* 1993/11th February 1937.

Guardians and Wards Regulation, section 17-A, clause (1). The combined effect of the two conditions mentioned in the section, namely, (1) sub-section to the provisions of the section and (2) consistency with the personal law, is that the recognized rights of the guardianship under the personal law will be given a subordinate position to that of the main consideration relating to the minor's welfare.

Appeal against the order of the District Judge, Jammu, dated 25th *Baisakh* 1993.

Mr. Dina Nath, Advocate.

Mr. Lok Nath, Advocate.

JUDGMENT.

This is an appeal from an order of the learned District Judge, Jammu, appointing *Mst.* Barkat Bibi to be the guardian of her minor daughters in preference to the appellant Rukin Din who is the father's brother of the minors. *Mst.* Barkat Bibi's first husband Feroze the father of the minors died some time back and Barkat Bibi remarried one Khuda Bux. The learned District Judge appointed the mother although he appears to be aware that her appointment is contrary to the tenents of Mohammadan Law. He found from the evidence led by the parties that the appellants interest is adverse to the minors with regard to the property of the minors ; the minors are too young to be separated from their mother ; the appellant maltreated the minors as well as their mother. In face of these findings and keeping the welfare of the minors in view he made this appintment.

The learned counsel for the appellant argued before us that the appointment of Barkat Bibi as the guardian of her minor daughters was contrary to the provisions of Mohammadan Law. From the day she married she according to Mohammad-

an Law was disqualified to act as a guardian of her minor daughters. No doubt according to Mohammadan Law the mother is disqualified from the guardianship even of her minor daughter if she is married to a man who is not related to the minor within the prohibited degree. In the present case *Mst.* Barkat Bibi thas married a man named Khuda Bux who is a total stranger and this marriage has certainly disqualified her from the guardianship under the Mohammadan Law. But section 17 (1) of the Guardian and Wards Act is clear and runs thus :

"In appointing or declaring the guardian of the minor the court shall subject to the provisions of this section be guided by what, consistently with the law of which the minor is subject, appears in the circumstances to be the welfare of the minor."

According to this section the welfare of the minor is of paramount consideration and the courts must pay proper heed to it. The courts keeping in view the welfare of the minor have to make an appointment consistently with the law to which the minor is subject. It is however to add that the circumstances of each case have to be taken into consideration and cannot be completely ignored. Ordinarily the appointment should be made consistently with the law to which the minor is subject but if the circumstances are such that the welfare of the minor cannot be secured by appointing a guardian consistently with the law to which the minor is subject the powers of the court would not be circumscribed by the tenets of Mohammadan Law—*vide 1925 Oudh 623.* It has been held in another case by a Division Bench of the Allahabad High Court reported as *1932 All. 215* per Suleman Acting C. J. "There can be no doubt that so far as the power to appoint and declare the guardian of a minor under section 17 of the Act is concerned the personal law of the minor concerned is to be taken into consideration but that law is not necessarily binding upon the court which must look to the welfare of the minor consistently with that law. This is so in cases where section 17 applies. In such cases the personal law has to this extent been superseded that it is not absolutely binding on the court and can be ignored if the welfare of the minor requires that someone else even inconsistently with the law is the more proper person to be appointed guardian of the minor."

Among various things which are necessary for the welfare of the minor special regard has to be paid to the age of the minor. If the minors are of such tender age that the fond care of the mother is extremely essential for them their mother should be preferred as a guardian though otherwise disqualified. In the case before us there is unrebutted evidence on the record that *Mst.* Barkat Bibi was maltreated by the appellant after the death of her husband and she had no alternative but to marry again. The appellant has frankly admitted that he is in possession of the land belonging to his deceased brother and has been appropriating the produce for himself. It is clear that the appellant's interest is adverse to the minors as regards the property left by the father of the minors. The minor daughters who are present in the court with their mother are of tender age and youngest could not be more than three years old. To separate these minor girls from their mother at this tender age is by no means beneficial to them. Besides *Mst.* Barkat Bibi has furnished security to the extent of Rs. 400 that she shall not give the girls in marriage without the previous permission of the court and shall not remove the girls out of the state territories without such permission. Khuda Bux the present husband of *Mst.* Barkat Bibi had deposed that his first wife was dead, he had no children and he would treat these minor girls as his own children. He would not charge any maintenance allowance from the minors' property.

In view of these circumstances we are satisfied that the learned District Judge has rightly exercised his discretion in appointing *Mst.* Barkat Bibi as guardian of her minor daughters. We accordingly uphold the order of the learned District Judge and dismiss this appeal. There will be no order as to costs.

Appeal dismissed.

---

39 P. L. R., J. & K., 42.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

BHAGAT SINGH *versus* STATE.

Criminal First Appeal No. 9 of 1993.

Jammu, 23rd *Poh* 1993/6th January 1937.

Where the evidence of the approver has been corroborated in material particulars by strong circumstantial evidence held that the conviction of the accused could be based upon that evidence.

Appeal against the order of Additional Sessions Judge, Jammu, dated 22nd *Katik* 1993.

Mr. Pindi Das, Vakil.

Government Advocate.

JUDGMENT.

The accused has been convicted by the Additional Sessions Judge, Jammu, under section 457 of the Ranbir Penal Code and sentenced to two years rigorous imprisonment and a fine of Rs. 50. Against this conviction and sentence the present appeal has been filed by the accused

The facts of the case are quite simple. On the night between 16th and 17th *Phagan* 1991 a mare belonging to Captain Jinsi Singh was stolen from his house in Jammu cantonment. The prosecution story is that a few days before the occurrence two persons Hari Singh and Bhagat Singh came from village Sarli Tehsil Amritsar and stayed in the house of Teja Singh Havaldar in Jammu cantonment. Sohan Singh, a sepoy in the Army met the above named persons and the three became very friendly. On the night of the occurrence Hari Singh and Bhagat Singh dined with Sohan Singh. On the morning of 17th *Phagan* 1991 it was discovered that along with the theft of the mare from Captain Jinsi Singh's house the two persons staying in the house of Teja Singh Havaldar also suddenly disappeared. Enquiries were made from Sohan Singh also as he had entertained Hari Singh and Bhagat Singh on the previous evening. Sohan Singh subsequently disclosed the whole thing and he described how the lock of the stable was broken open by Bhagat Singh and Hari Singh and the mare was removed from the stable by them while Sohan Singh himself kept watch outside the stable. Upon that a party consisting of Captain Jinsi Singh, Sohan Singh, Teja Singh, Havaldar, Thakur Ravel Singh Inspector Police and Dhanraj Sub-Inspector proceeded to village Sarli in Tehsil Amritsar on 22nd *Phagan* 1991 in a lorry. On the way the party took along with them the local constable Taj Din and the local lambardar Sohel Singh. An enquiry was made at the house of Bhagat Singh but Bhagat Singh's mother told that Bhagat Singh had gone to Tarn Taran. Soon after two persons were seen running from the village and accused Bhagat Singh was identified as one of them. The persons who were seen running were chased for about two miles but they made good

their escape. Bhagat Singh was subsequently arrested and placed on trial. Hari Singh is still absconding and we have nothing to do with him in the present case. Sohan Singh turned an approver. It may be mentioned here that the party which went to Sarli in the lorry left Teja Singh behind to find out the mare and after about a fortnight Teja Singh returned to Jammu with the stolen mare. According to Teja Singh the mare was found in a cattle pond in village Ningal which is a few miles from Sarli where the accused Bhagat Singh's house is situated.

The accused totally denied the charge. He did not even admit the fact of his coming to Jammu a few days before the occurrence and staying with Teja Singh Havaldar.

It is urged by the appellant's counsel that the approver Sohan Singh's statement should not be relied upon as that statement has not been corroborated by any independent evidence. This contention is not correct. There is ample circumstantial evidence which corroborates the statement of Sohan Singh approver. In the first place there is the important fact that a few days before the occurrence the accused Bhagat Singh and one other person came to Jammu Cantonment and stayed with Teja Singh Havaldar. It appears from the evidence of Teja Singh Havaldar that he was interested in the case and wanted to save Bhagat Singh but inspite of all that he could not deny the fact that the accused with one other man came to Jammu Cantonment and stayed with him for a few days. In face of this statement on the part of Teja Singh, the plea of the accused that he never came to Jammu and never stayed with Teja Singh becomes clearly worthless. Then there is the significant fact that exactly on the same night on which the mare was stolen from Captain Jinsi Singh's stable Teja Singh's visitors that is the accused and another person suddenly disappeared from Teja Singh's house. Thirdly it is also significant that the mare was subsequently found from a place only a short distance from the village of the accused person. Fourthly the accused Bhagat Singh was seen running from his village on the day when the party from Jammu Cantonment went there. The accused was identified by Taj Din and Dhan Raj. It is thus clear that the evidence of the approver has been corroborated in material particulars by strong circumstantial evidence.

An offence under Section 457 of the Ranbir Penal Code has been fully established against the accused appellant and

in view of the nature of the offence the punishment awarded is not excessive. The appeal is dismissed. The appellant shall be informed of this order in Jail.

Appeal dismissed.

---

39 P. L. R., J. & K., 45.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice
and Mr. Justice K. L. Kichlu.

NARAIN DASS, LACHHMAN DASS, *versus* KARAM DAD, SYED MOHD.

Civil 2nd appeal No. 37 of 1993.

Jammu, 4th *Chet* 1993.

A suit for compulsory registration of a document cannot succeed unless the execution of that document is fully established. The mere fact that a person did not appear before the Registration authority does not amount to an admission on the part of that person that the document was executed by him.

Appeal against the order of District Judge, Jammu, dated 4th *Sawan* 1993.

Mr. Dina Nath.
Mr. Ghulam Abbas.

JUDGMENT.

The plaintiffs instituted a suit for the compulsory registration of a rent deed dated 28th *Chet* 1979 in respect of 38 kanals 13 marlas of land. The plaintiff's claim was that during the defendant's minority the deed was executed on their own behalf by their mother *Mst.* Karam Bano and by their uncle Habib Ullah in regard to his own share in the land. The trial court decreed the plaintiff's suit, but on appeal the learned District Judge of Jammu set aside the decree and dismissed the plaintiff's suit. The plaintiffs have now come in second appeal to this court.

The lower appellate court dismissed the suit on the ground that the execution of the document was not proved. The plaintiffs produced two witnesses Taj Din and Jagat Singh to prove the execution of the document. Both these persons are shown as marginal witnesses of the document. Both these witnesses admitted that they only saw a woman at the time of the execution of the document but they did not know *Mst.* Karam Bano and so they could not say whether that woman was *Mst.* Karam Bano or some other woman. So

the execution of the document so far as it relates to *Mst.* Karam Bano has not been established by the evidence of these witnesses.

The only point which is now urged in this appeal is that even if the execution of the document by *Mst.* Karam Bano is not proved the suit might have been decreed so far as it related to the share of Habib Ullah as the execution of the document was admitted by Habib Ullah. The appellant's learned counsel has not been able to show as to when any such admission was made by Habib Ullah. Habib Ullah had died before the present suit was instituted and he never appeared before the Sub-Registrar or the Registrar. The mere fact that Habib Ullah did not appear before the registration officers does not amount to an admission on his part in regard to the execution of the document. In these circumstances we do not see any reason to interfere in the finding of the lower appellate court that the execution of the document has not been proved.

The appeal is dismissed with costs.

Appeal dismissed.

39 P. L. R., J. & K., 47.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu and
Mr. Justice J. N. Wazir.

SANT RAM *versus* MALUKA and 6 OTHERS.

Criminal Reference No. 11 of 1993.

29th *Magh* 1993.

Held, that, to justify an order for the award of compensation under section 250 of the Code of Criminal Procedure, it is necessary that there should be a finding that the complaint was false and either frivolous or vexatious.

Reference made by the Additional Sessions Judge, Jammu, dated 4th *Magh* 1993.

Parties in person.

JUDGMENT.

The Tahsildar Magistrate First Class Ranbirsinghpura dismissed a complaint under Section 379/426 R. P. C. lodged by Sant Ram against Maluka and six other accused persons and directed the complainant to pay Rs. 28 in all to the seven accused persons by way of compensation under Section 250 of the Code of Criminal Procedure The complainant filed a revision application against that order and the learned Additional Sessions Judge has made a reference to this court.

The learned Judge is of opinion that there was nothing on the record to show that the complainant knew or had reason to believe that the complaint was false or frivilous. He has accordingly recommended that the order of the Magistrate regarding compensation may be set aside. A reference to the order of the trial court clearly shows that the complaint was dismissed on the ground that the complainant had failed to prove that the land in dispute was in his possession. There is absolutely no finding of the trial court that the complaint was false, frivolous or vexatious. To justify an order for the award of compensation under section 250 of the Code of Criminal Procedure, it is necessary that there should be a finding that the complaint was false and either frivolous or vexatious. As stated above, there is no such finding of the trial court. Under these circumstances, the order of the trial court was not justified and cannot be maintained. We accordingly accept the recommendation and set aside the order of the trial court. The record shall be returned to the lower court with a copy of this order.

Petition accepted.

39 P. L. R., J. & K., 48.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

HUSSAIN KHAN *versus* KALU MAL.

Civil Second Appeal No. 25 of 1937.

Jammu, 12th February 1937.

A decree was passed against the estate of a deceased person. The decree-holder applied that the legal representative of the deceased person should be held personally responsible under section 52 (2) of the Code of Civil Procedure for the payment of the decretal amount as he had disposed of a considerable portion of the property of the deceased person and misappropriated the sale proceeds. On enquiry it was not established that any portion of the property of the deceased person was disposed of by the legal representative.

Held that, the legal representative could not be held personally responsible for the payment of the decretal amount. Section 52 (2) will apply only when it is established that the legal representative has disposed of any portion of the estate of the deceased person and failed to satisfy the court in regard to that property.

Appeal against the order of Additional District Judge, Jammu, dated 17th *Jeth* 1993.

Mr. Ghulam Abbas.

Mr. Ram Lal Anand.

JUDGMENT.

A decree was passed against the estate of one Anayat Khan deceased. The decree-holder applied in the court of the Subordinate Judge Mirpur that as the present appellant Hussain Khan had disposed of a considerable portion of Anayat Khan's property Hussain Khan must be held personally responsible for the payment of the decretal amount. The Sub-Judge Mirpur rejected the application, but on appeal the learned District Judge Jammu set aside the order of the Sub-Judge and declared the appellant Hussain Khan personally liable for the payment of the decree. Hussain Khan has now filed a further appeal in this court.

The decree-holder's claim was that a considerable portion of the property of Anayat Khan deceased had been disposed of by Hussain Khan and that the sale proceeds of the property so disposed of had been misappropriated by Hussain Khan and it was on this ground that the application was made

that Hussain Khan should be made personally responsible for the payment of the decretal amount. Hussain Khan denied that any property belonging to Anayat Khan was disposed of by him. It was for the decree-holder to satisfactorily establish that any property belonging to Anayat Khan had actually been disposed of by Hussain Khan but on examining the record it appears that the decree-holder has not been able to substantiate his claim. The decree-holder produced only Jagat Ram Patwari as his witness. This witness stated that Hussain Khan had alienated certain plots of land but he could not state whether that land was the property of Anayat Khan deceased or of Hussain Khan himself. Such being the case Hussain Khan cannot be held personally responsible for the payment of the decree under section 52 (2) of the Code of Civil Procedure. I therefore accept this appeal and setting aside the order of the lower appellate court reject the decree-holder's application with costs throughout.

---

39 P. L. R., J. & K., 49.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom Chief Justice
and Mr. Justice K. L. Kichlu.

SARDARU *versus* TAJ MOH'D., LAL DIN.

Civil Second Appeal No. 56 of 1993.

Jammu, the 2nd March 1937.

Suit for compulsory registration of a document. An order consigning a document to record in the absence of the parties does not amount to an order refusing the registration of the document. 37 P. L. R., J. & K., 18, followed.

Appeal against the order of Additional Sessions Judge, Jammu, dated 15th *Poh* 1993.

Messrs. Ram Lal Anand and *Mohammad Khan.*

Mr. Chaman Lal.

JUDGMENT.

On 15th *Har* 1987 a sale deed in respect of sixty-two kanals and eighteen marlas of land was executed in favour of the plaintiff On 17th *Har* 1987 the deed was presented before the Sub-Registrar Ranbirsinghpura for registration but the vendees were asked to produce a certificate of being State subjects. It appears that the vendees could not secure the necessary certificate for some time and so on 23rd *Phagan* 1987 the document was consigned to the record room by the Sub-Registrar. On 12th *Har* 1992 the vendees again applied for the registration of the document but that application was

rejected on 28th *Har* 1992. Against this order rejecting the application an appeal was filed before the Registrar and that appeal was also dismissed on 26th *Bhadon* 1992. On 22nd *Assuj* 1992 the present suit was instituted by the vendees for the compulsory registration of the sale deed. The trial court dismissed the plaintiffs' suit but on appeal the Additional District Judge, Jammu, reversed the order of the lower court and decreed the plaintiffs' suit and directed the compulsory registration of the document. Against this decree of the lower appellate court the present appeal has been filed by the vendor.

The main point urged by the appellant's counsel is that the suit filed by the plaintiffs was time barred and could not therefore be decreed. The learned counsel's contention is that the order of the Sub-Registrar dated 23rd *Phagan* 1987 consigning the document in the absence of the parties to the record room in fact amounted to an order refusing to register the document and as such the suit for compulsory registration of the document ought to have been instituted within 30 days from the date of that order according to section 77 of the Registration Regulation and as the present suit was instituted on 22nd *Assuj* 1992 it should be considered to be time barred. But this contention is not correct. When the document was first presented to the Sub-Registrar for registration on 17th *Har* 1987 the requisite State subject certificate of the vendees was not produced along with the document and so the vendees were directed to produce that certificate. As the certificate was not produced by the 23rd *Phagan* 1987 the Sub-Registrar did not consider it necessary to keep the document on the list of pending papers and so the order was passed on 23rd *Phagan* 1987 by which the document was consigned to the record room. This order by which the document was simply sent to the record room does not and cannot mean that the registration of the document was refused. This point as to whether the order consigning a document to the record room amounted to an order refusing registration of the document or not came up before this court in the appeal *Hari Ram* v. *Ismail* and it was held by this court that an order consigning the document to the record room did not amount to an order refusing the registration of the document. The judgment of this court in *Hari Ram* v. *Ismail* is published in *37 P. L. R., J. & K., 18.* As has been shown above it was on 26th *Bhadon* 1992 that the registration of the document was refused by the Registrar and so the present suit instituted on 22nd *Assuj* 1992 was clearly within time.

It has also been urged on behalf of the appellant that when the document was first presented before the Sub-Registrar on 17th *Har* 1987 the vendor did not appear before the Sub-Registrar on that date and so it was not a proper presentation within the meaning of Section 34 of the Registration Regulation This contention is also not correct. It was specifically mentioned in clause (2) of the plaint that the document was presented before the Sub-Registrar by both the parties. In the written statement filed by the defendant on 19th *Maghar* 1992 this statement of the plaintiffs that the document was presented by both the parties was not denied by the defendant vendor. Besides this point was never urged by the appellant in any of the lower courts. So this is only an after thought and can be of no help to the appellant.

The appeal is dismissed with costs.

Appeal dismissed.

---

39 P. L. R., J. & K., 51.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu and Mr. Justice J. N. Wazir.

KOTWAL GOURI NAND *versus* 1. GHUKU LATHA, MINOR UNDER THE GUARDIANSHIP OF CHANKU,
2. KUNJ LAL.

Civil Second Appeal No. 65 of 1993.

Jammu, 22nd *Chet* 1993.

Legitimacy—Presumption—Burden of Proof.

Held, that, a child born during continuance of valid marriage is deemed to be legitimate and the whole burden of proving illegitimacy is on the person interested in making out illegitimacy.

Held, also, that presumption regarding proving legitimacy cannot be rebutted by circumstances which only create doubts and suspicions.

Appeal against the order of the District Judge, Jammu, dated 22nd *Poh* 1993.

Mr. Chaman Lal.

Mr. Dina Nath.

JUDGMENT.

Gouri Nand brought a suit for possession of 58 kanals and 7 marlas of land and a house on the strength of a sale-deed dated 15th *Poh* 1980 alleged to have been executed by one Darshan, father of the present respondents. The trial

Court of Sub-Judge, Bhadarwah, held that the suit to be barred by limitation and dismissed the same. The plaintiff appealed to the District Judge of Jammu but was not successful. He has come up in second appeal to this court.

It has been contended by the learned counsel for the appellant that the courts below were not right in holding that Kunj Lal respondent was a legitimate son of the vendor Darshan. It has further been contended that as the plaintiff was in possession of the land in dispute for about a couple of years after the sale-deed had been executed in his favour, the lower courts were not right in holding that the suit was time barred. These contentions, however, are devoid of all force.

It is admitted that *Mst.* Bhag Wali was the wedded wife of Darshan and that Kunj Lal was born during the continuance of a valid marriage between them. The mere fact that Darshan had some months before the birth of Kunj Lal instituted a complaint against one Anant Ram for enticing away his wife, *Mst.* Bhag Wali, is not sufficient to prove that Kunj Lal was not a legitimate son of Darshan. A child born of a married woman is deemed to be legitimate and it throws on any person who is interested in making out the illegitimacy the whole burden of proving it. The plaintiff has failed to prove this. The presumption regarding legitimacy cannot be rebutted by circumstances which only create doubts and suspicions. The evidence of *Mst.* Bhag Wali in regard to the parentage of Kunj Lal is unequivocal. It is in evidence that at the time Darshan got Kunj Lal admitted in a school, in the school register Darshan was shown as the father of the child. Moreover in the plaint in the suit filed by the present plaintiff in *Baisakh* 1989 against Kunj Lal respondent, the defendant was shown as the son of Darshan. In the face of this clear admission by the plaintiff himself and the evidence produced by the defendant, the lower courts have rightly held that Kunj Lal was born in lawful wedlock.

In the written statement filed by the defendant he had clearly stated that the plaintiff was never in possession of the property in dispute. It was thus for the plaintiff to prove that he at any time within 12 years preceding the suit was in possession of it but there is absolutely no evidence on the point on the record. The fact that sometime after the execution of the alleged sale-deed Darshan instituted a suit for cancellation of the document alone shows that the allegation now made by the plaintiff that at the time of the execution of the sale-deed

Darshan had made over possession of the property to him is not correct, as in that case Darshan would certainly have brought a suit not for concellation of the document alone but for possession as well. All this clearly goes to show that the property in dispute was never in possession of the plaintiff and the suit instituted more than 12 years after the excution of the sale-deed was clearly out of time. The suit has accordingly been rightly dismissed.

There is no substance in this appeal which is dismissed with costs.

Appeal dismissed.

---

39 P. L. R., J. & K., 53.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu.

HAYAT ALI KHAN *versus* RAHMAN.

Civil Revision No. 44 of 1993.

Jammu, 17th *Magh* 1993.

Held, that—

"A document in which there is a stipulation as to interest or a promise to pay becomes an agreement and requires to be stamped as such under Article 5 (c) of Schedule I of the Stamp Regulation".

Application for revision of the order of Subordinate Judge, Kotli, dated 1st *Katik* 1993.

Mr. Dina Nath.

Mr. Abdul Hamid.

JUDGMENT.

The only point urged by the learned Counsel for the applicant is that the trial court of Sub Judge Kotli was not right in holding that on items Nos. 1, 5, 6, 7, 8, 10, 13, 14, 15, 21, 23 and 25 stamp duty was leviable as provided for an agreement. His contention is that these documents should be treated as acknowledgments and those which have been attested as bonds. I however see no force in this contention. The documents contain stipulation as to interest and cannot be treated as acknowledgments of debts. A document in which there is a stipulation as to interest or a promise to pay becomes an agreement and requires to be stamped as such under Article 5 (c) of Schedule I of the Stamp Regulation. It is true that some of the documents are attested by witnesses but as they do not contain any promise to pay, they cannot be treated as bonds. It need hardly be stated that

only express agreements to pay money which are attested by witnesses are chargeable as bonds. The trial court was accordingly right in not admitting the documents which were clearly insufficiently stamped.

There is no substance in this revision application which is dismissed with costs.

---

39 P. L. R., J & K., 54.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice and Mr. Justice K. L. Kichlu.

STATE *versus* SHAM LAL.

Criminal Acquittal Appeal No. 17 of 1993.

Jammu, 25th *Chet* 1993.

A. The opinion of a private hand writing expert who is first consulted by a party and is produced in the court only when his opinion is favourable to the party producing him should not be entitled to much weight. The position of such a witness is that of an interested witness.

B. The intentions of a person can only be judged by his acts. All the surrounding circumstances should be carefully considered and if there are circumstances to show that acts of dishonesty or fraud are committed by a person the intentions of that person will be presumed to be dishonest.

Appeal against the order of acquittal of Additional District Magistrate, Jammu, dated 5th *Katik* 1993.

Government Advocate.

Messrs. Amar Dass, Advocate and *Behari Lal Bhakhri, Vakil.*

JUDGMENT.

The accused Sham Lal was charged under sections 408/420 of the Ranbir Penal Code but was acquitted by the trial court. Against this order of acquittal the present appeal has been filed on behalf of the Government.

The facts of the case are quite simple. Sham Lal accused was an Accountant in the office of the Chief Medical Officer Jammu and the other accused Vishwa Nath was a miscellaneous clerk in that office. On 24th *Maghar* 1989 a false bill (Exhibit P. I) was prepared by Vishwa Nath on account of the pay of 37 disinfectors for the month of *Katik* 1989 and this bill was initialled by the accused Sham Lal on 26th *Maghar* 1989 and after that the bill was signed by the Chief Medical Officer Jammu, Dr. Balwant Singh. On 28th

Maghar 1989 the amount of bill, Rs. 416-4-0 was drawn from the Jammu Treasury by Vishwa Nath. Subsequently it was discovered that the establishment in regard to which the bill was prepared and the amount drawn from the Treasury never existed and that a fictitious bill was prepared. Both Sham Lal and Vishwa Nath were challaned and jointly tried. Vishwa Nath admitted preparing the bill and also receiving the amount from the Treasury but pleaded that he was not in charge of the account matters in the office and that the false bill in the present case was written by him at the dictation of the Accountant Sham Lal and that the money received from the Treasury was also handed over by him to Sham Lal. Sham Lal totally denied having taken any part in the preparation of the bill and also denied his initials on the bill. He also denied that the amount of the bill was handed over to him by Vishwa Nath. The trial court convicted Vishwa Nath under sections 408-420 of the Ranbir Penal Code but acquitted the accused Sham Lal as stated above although the finding of that court was that the false bill contained Sham Lal's initials.

We have been taken through the entire evidence by the learned Government Advocate and it is urged by him that the principal offender in the case was Sham Lal and that he should not have been acquitted. Mr. Amar Dass who argued the case on behalf of the respondent contended that the false bill did not bear Sham Lal's initials and in that connection he referred us to the evidence of a defence witness Mr. Des Raj Nanda who appeared as a hand writing expert. We have considered the evidence of this defence witness but we do not think that much importance can be attached to his evidence. The witness admitted that he was privately consulted by the accused before he was produced in the court and that he was produced as his opinion was favourable to the accused. So this witness obviously appeared as an interested witness in the case. On the other hand there is overwhelming evidence on the file to show that the initials existing on the bill are really those of Sham Lal accused. Babu Mela Ram receipt and despatch clerk, Babu Basheshar Nath Assistant Accountant and Dr. Balwant Singh Chief Medical Officer had occasions to see Sham Lal's initials every day and they all stated that the initials on the bill were really those of Sham Lal accused. Mela Ram clerk had been working with the accused Sham Lal in various capacities for 18 or 20 years and he definitely

identified the initials on the bill to be those of Sham Lal accused. The Chief Medical Officer Dr. Balwant Singh also definitely stated that the initials were those of Shamlal and also that he signed the bill as Chief Medical Officer merely on the strength of the initials of the Accountant Shamlal accused. Besides it is clear from the evidence of Mir Habib Ullah Superintendent of the Office of the Chief Medical Officer Jammu that during the departmental enquiry which was made in regard to the preparing of the false bill Sham Lal accused did not deny his initials on the bill. On the other hand during that enquiry Sham Lal admitted although half heartedly that his initials were perhaps affixed on the bill on account of rush of work. This admission was made by Sham Lal accused before Mir Habib Ullah and Mr. Amar Dass frankly admitted that Mir Habib Ullah was a truthful witness and that the veracity of that witness could not be challenged. Mir Habib Ullah clearly stated that when Sham Lal was questioned as to how he affixed his initials on the bill Sham Lal replied that he might have done that in the absence of the Office Superintendent Mr. Indersen. But when attendance Register of the Office establishment was consulted then and there and it was found that Mr. Indersen was present in the office on 26th *Maghar* 1989 then Sham Lal changed his ground and suggested the plea of rush of work. During the trial however Sham Lal accused totally denied his initials on the bill. In regard to this point we are satisfied that the initials on the bill are those of Sham Lal accused and that a dishonest attempt was made by him to deny these initials altogether.

It was argued by Mr. Amar Dass that even if the initials on the bill were assumed to be those of Sham Lal accused the accused could not be convicted as it had not been established that the initials were affixed on the bill by the accused with any dishonest intention. It is suggested that the accused may not have had any dishonest intentions and might have initialled the bill simply as a matter of office routine in the rush of work. The intentions of person can only be judged by his acts. In the present case there is sufficient circumstantial evidence to show that the intentions of the accused were dishonest. The accused appeared before us and we noticed that he attempted to avoid to give straight answers to certain simple questions put by us. For instance a question was put

to him as to *how** long he had worked as an accountant in the office of the Chief Medical Officer. This was a simple question and a simple answer was expected. The accused started by giving evasive replies but he had to admit in the end that he was working as accountant for the last 13 years. It is clear from the evidence that the accused had great influence on the Chief Medical Officer and that he could secure any orders he liked. During the trial the plea of the accused was not that he initailled the bill without properly checking or scrutinizing it and that neglect was due to the rush of work but he totally denied his initials on the bill. This denial by itself betrays dishonest intentions on the part of the accused. It is now admitted by everybody that the bill Exhibit P. I was entirely a fictitous bill and that the epidemic establishment for which the bill was prepared never existed. It is also admitted that Vishwa Nath accused was not in charge of preparing pay bills for any sort of establishment and that the pay bills of the epidemic department were according to the past practice always prepared by the Medical Officer-in-charge of the epidemic department. The present bill was not received from the office of the Medical Officer-in-charge of the epidemic department. On the other hand the whole of this bill was in the hand writing of Vishwa Nath clerk. It cannot be believed that an experienced accountant like Sham Lal accused would not notice the irregular nature of the bill and quietly affix his initials on that bill unless he himself was not a party to the preparation of that bill. It is clear from the evidence of the Chief Medical Officer that he signed the bill on the strength of the initials of the accountant Sham Lal. The other accused Vishwa Nath who had nothing to do with the preparing of pay bills would not have dared to send up the bill to the Chief Medical Officer for signatures unless and until full help and co-operation of the accountant was available to him. Any forgery committed by Vishwa Nath single-handed would have been at once detected by the accountant as well as by the Chief Medical Officer. From the very nature of his duties the accountant was conversant with all matters regarding the pay of establisment and he must have known that during the month of *Katik* 1989 no epidemic establishment was actually employed in the Illaqa. So it appears that to defraud and cheat the Government the accused Sham Lal got hold of a junior clerk of the Office Vishwa Nath and with his help he got a false bill prepared and the money drawn from the treasury. We think that in the

* *Sic.*

circumstances of the case it would have been absolutely impossible for the false bill to succeed unless and until the accountant was an active party in the transaction. The accused Vishwa Nath produced evidence to show that the amount of the bill was actually handed over by him to Sham Lal accused. This was denied by the accused Sham Lal and it is urged on his behalf that if the payment of the money was made by Vishwa Nath to Sham Lal why was not any receipt obtained from the latter. But it is clear from the evidence of Mr. Phatke, Mr. Mela Ram and Dr. Balwant Singh that receipts are not given to office clerks for the money which is brought from the treasury. Keeping in view all the circumstances of the case we are fully convinced that an offence under section 420 of the Ranbir Penal Code has been established against the accused Sham Lal. We therefore set aside the order of acquittal passed by the trial court convict accused Sham Lal under section 420 of the Ranbir Penal Code and sentence him to one year's rigorous imprisonment and a fine of Rs. 10. In default of payment of fine the accused shall undergo further rigorous imprisonment for fifteen days.

---

39 P. L. R., J. & K., 58.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu and Mr. Justice J. N. Wazir.

AMAR NATH & another *versus* *Mst.* JANKI & 4 others.

Civil Second Appeal No. 83 of 1993.

Jammu, 8th *Magh* 1993.

Under Mitakshra School of Hindu Law a Hindu daughter, inheriting from her father takes a life estate only with reversion at her death to his heirs. An unmarried daughter, of course, excludes married daughters but on her death the married sisters succeed.

Appeal against the decree of District Judge, Jammu, dated 18th *Baisakh* 1993.

Mr. Chaman Lal.

Mr. Harbans Bhagat.

JUDGMENT.

Mst. Janki and *Mst.* Thakri brought a suit for possession of half share of an estate in Mouza Mana, Tehsil Kishtwar on the allegation that *Mst.* Bhagdei, their sister, who held the land during her life time alone having died, the estate reverted to them. Amar Nath who is a nephew of Bhagdei's husband, pleaded that Bhagdei had died issueless and had

bequeathed the property to him and the same was duly mutated in his favour. The trial court of Munsiff Kishtwar held that *Mst.* Bagdei took a limited estate only from her father, Bahadur and that on her death the same passed to her sisters the plaintiffs. It was further held that the defendants had failed to establish a custom whereby an unmarried sister excludes her married sisters from their father's property and takes a full estate. The suit was accordingly decreed by the trial court. The defendants appealed to the District Judge but the same was not successful. This is second appeal.

The learned counsel for the appellants has made a faint effort to show that the lower courts have erred in holding that the defendants had failed to prove the alleged custom. There is a concurrent finding however of both the lower courts against the appellants and their counsel has not been able to show as to why this concurrent finding of fact of the two lower courts should be disturbed in second appeal. It is clear that under the Mitakshara school of Hindu Law by which the parties are governed, a Hindu daughter, inheriting from her father, takes a life estate only with reversion at her death to his heirs. An unmarried daughter of course excludes the married daughters, but on her death the married sisters succeed. As the alleged custom has not been proved, *Mst.* Bhagdei was certainly not competent to make a bequeast in favour of her husband's nephew of the property which she had inherited from her father. The claim has rightly been decreed and we see no reason to interfere with the concurrent finding of the courts below.

The appeal fails and is dismissed with costs.

---

39 P. L. R., J. & K., 59.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice, and Mr. Justice Janki Nath Wazir.

QAMAR DIN, SHAHAB DIN, *versus* NATHU AND OTHERS.

NATHU AND OTHERS *versus* QAMAR AND SHAHAB DIN.

Civil 2nd Appeal No. 63 of 1993.

Jammu, 31st *Chet* 1993.

When it is specifically provided in a mortgage deed that the mortgagee will be entitled to make improvements on the mortgaged property with the permission of the mortgagor, no compensation shall be allowed to the mortgagee for improvements which might have been effected without the permission or the consent of the mortgagor.

Appeal against the order of District Judge, Jammu, dated 7th *Maghar* 1993.

Mr. Ram Lal Anand.

Mr. Dina Nath.

JUDGMENT.

The plaintiffs instituted a suit for the possession of 64 *kanals* 3 *marlas* of land situated in village Lati Tehsil Ramnagar. Their claim was that the land had been wrongfully taken possession of by the defendants during their minority. The defendants pleaded that the land had been mortgaged to them by the plaintiff's father Aziz Din on 6th *Baisakh* 1979 for a sum of Rs. 200 that they had constructed houses on the land and that they could not be dispossessed from the land without the payment of the mortgage money and Rs. 200 by way of compensation for the constructions that had been made by them on the land. The trial court passed a decree in favour of the plaintiffs provided a sum of Rs. 305 was paid by them to the defendants Rs. 200 by way of mortgage money and Rs. 105 by way of compensation. On appeal the learned Additional District Judge varied the decree of the trial court to this extent that the plaintiffs were held liable only for the payment of Rs. 200, the mortgage money and nothing by way of compensation. Against this decree a further appeal has been filed by the plaintiffs and the defendants have also filed cross-objections. The plaintiffs prayer is that they should not be made liable to pay any mortgage money to the defendants and the object of the defendant's cross-objections is that the compensation for the houses disallowed by the lower appellate court should be allowed to them. This judgment will govern the decision of the appeal as well as of the cross-objections.

We will take the plaintiff's appeal first. It is urged on behalf of the appellants that the mortgage amount of Rs. 200 said to have been paid by the defendants was never paid to the plaintiffs' father Aziz Din. In regard to this point there is the finding of both the courts that the mortgage amount of Rs. 200 was actually paid to the plaintiffs' father Aziz Din and this concurrent finding of fact cannot be challenged in this second appeal. We have however examined the record and we find that the finding of the lower courts in regard to the payment of Rs. 200 is fully justified. There is the evidence of Ahamadu and Rasilu in regard to this point and no reason has been shown as to why this evidence should not be relied upon.

As regards the cross-objections filed by the defendants it may be noted here that in the mortgage deed dated 6th *Baisakh* 1979 it was specifically provided that improvements on the land could only be made by the mortgagees with the permission of the mortgagor. In the present case it has not been shown by the defendants that the improvements for which compensation is now claimed were made by them with the permission or consent of the mortgagor. Such being the case the mortgagees are not entitled to any compensation and the same has been rightly disallowed by the lower appellate court.

In the result both the appeal and the cross-objections are dismissed with costs.

Appeal dismissed.

---

39 P. L. R., J. & K., 61.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice Janki Nath Wazir.

Syed HAKIM ALI SHAH AND OTHERS, *versus* NAWAB BIBI AND OTHERS.

Civil Second Appeal No. 58 of 1993.

Jammu, 5th *Baisakh* 1994.

The existence of a special custom alleged by a party has to be proved by that party. In the absence of any special custom to the contrary the parties will be governed by their personal law in the matter of succession.

A girl who is a State subject by birth cannot be deprived of her rights of inheritance merely by the fact that she has married a man who is not a State subject.

Appeal against the order of District Judge, Jammu, dated 25th *Katik* 1993.

Mr. Behari Lal Bhakhri.

Mr. Loknath Sharma.

JUDGMENT.

Azim Shah and Fazal Shah were two brothers. Azim Shah died leaving two widows Nawab Bibi and Mehr Bibi and a daughter by Nawab Bibi named Ghulam Kubra. On 20th *Phagan* 1986 *Mst.* Nawab Bibi executed a deed of gift in favour of her daughter Ghulam Kubra by which all the property of Azim Shah which was in her possession was transferred in favour of *Mst.* Ghulam Kubra. On 23rd *Jeth* 1991 Fazal Shah's sons instituted a suit for a declaration that the gift as made by *Mst.* Nawab Bibi in favour of *Mst.*

Ghulam Kubra was invalid and would not therefore affect their reversionary rights in the property of their uncle Azim Shah on the death of Azim Shah's widows Nawab Bibi and Mehr Bibi,. The trial court dismissed the plaintiffs' suit and the decree of the trial court was upheld on appeal by the learned District Judge Jammu. The plaintiffs have now come in second appeal to this court.

Two main points have been urged in this appeal. The first is that according to a special custom prevailing among the parties *Mst.* Nawab Bibi was precluded from making a gift of her husband's property in favour of her daughter. But the existence of this alleged custom has not been established by the plaintiffs. In the absence of any special custom to the contrary the parties will be presumed to be governed by their personal law in the matter of succession. The parties are admittedly Shias and according to Shia Law a daughter is a legal heir of her father. Besides this it is clear from the evidence of the plaintiffs' own witnesses Dhundeshah and Hussain Shah that the parties are governed by Mohammadan law and not by custom in the matter of succession. Dhundeshah is a near relation of the parties and he definitely stated that he had executed a document in favour of his wife by which all interests in his property would be transferred to his wife on his death and that she will be free to transfer that property to anybody she liked. This would not have been the case if the parties were governed by any special custom. So the custom alleged by the plaintiffs has not been proved.

The second point is that although *Mst.* Ghulam Kubra is a State subject by birth she has lost that status by marrying a non-State subject and as such the transfer of immoveable property as made by the gift could not be validly made in favour of *Mst.* Ghulam Kubra. This point seems to have been raised under some misapprehension. This is not a case of transfer of immovable property to a stranger. On the other hand *Mst.* Ghulam Kubra is a legal heir of her father and if Nawab Bibi has trasferred any rights to *Mst.* Ghulam Kubra which she should inherit in the ordinary course on the death of Nawab Bibi the question of *Mst.* Ghulam Kubra's status as a State subject does not arise. *Mst.* Ghulam Kubra is admittedly a legal heir of her father and as such she is entitled to get her rights irrespective of other considerations.

The appeal is dismissed with costs.

Appeal dismissed.

———

39 P. L. R., J. & K., 63.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

JALAL DIN *versus* STATE.

Criminal 1st Appeal No. 30 of 1993.

Jammu, 10th *Baisakh* 1994.

An accused person was committed to sessions on a charge of murder under section 302 of the Ranbir Penal Code. The sessions court acquitted the accused on the charge of murder but convicted him for an offence of grievous hurt. No appeal against the order of acquittal was filed by the government but the accused filed an appeal in the High Court against his conviction for grievous hurt. In such an appeal the point that the accused should have been convicted of the major offence could not be raised.

Appeal against the order of the Additional Sessions Judge, Jammu, dated 25th *Magh* 1993.

Government Advocate.

JUDGMENT.

The accused person was committed to sessions on a charge of murder under section 302 of the Ranbir Penal Code. The learned Additional Sessions Judge Jammu however convicted the accused under section 325 (Grievous hurt) and sentenced him to three years' rigorous imprisonment and fine of Rs. 25. This is an appeal filed by the accused against this conviction and sentence.

The learned Government Advocate started by saying that this was really a case of murder and that the Additional Sessions Judge Jammu was not justified in convicting the accused for a minor offence. It was however admitted by him that no appeal against the order of acquittal on the charge of murder had been filed on behalf of the government and that he was therefore precluded from relating this point in this appeal which has been filed by the accused person against his conviction under section 325 of the Ranbir Penal Code. I have examined the record. As there is no appeal before me against the order of acquittal on a charge of murder I do not propose to express any opinion in regard to the findings of the lower court which are not necessary for the disposal of the present appeal filed by the accused person. I shall therefore confine myself strictly to the appeal filed by the accused person.

The facts of the case are quite simple. On 11th *Assuj* 1993 the accused Jalal, his wife *Mst.* Rajo and some other

members of his family were returning from a dhar to their village. The party stopped for some time near a nalla. All of a sudden there was a quarrel between the accused and his wife *Mst.* Rajo and the accused started beating her. The girl was at first struck by the accused with the butt-end of his rifle and was also given kicks and blows all over her body. The girl was so mercilessly beaten that she could not stand or walk and as the party was moving from the nalla the girl had to crawl on her hands for some distance. The accused at first left the girl but came back again and again gave her a severe beating. The result was that the girl died soon after. The prosecution version was that at the time when the second beating was given to the girl she was also strangulated by the accused. The learned Additional Sessions Judge did not believe the story of strangulation and I will express no opinion in this appeal in regard to this finding When the girl died, an attempt was made by the accused to show that the girl was still alive but was suffering from some blader-trouble. At night time it was given out that the girl had died. She was burried next morning but a report was made to the Police by the girl's maternal uncle Rustam that the girl had not died a natural death but was the victim of foul play. The body of the girl was disinterred on 20th *Assuj* 1993 and the *post mortem* examination was conducted on 27th *Assuj* 1993. A large number of external injuries were found on the body of the girl all over and in the opinion of the medical officer who conducted the *post mortem* examination the death of the girl was due to strangulation.

The accused denied having given any sort of beating to his wife *Mst.* Rajo. His plea was that the girl was suffering from blader trouble and had died as a result of that trouble. The plea put forward by the accused was absolutely worthless. There are a number of witnesses who actually saw the accused mercilessly beating his wife *Mst.* Rajo. Kesro, Devi Dayal, Khoja and Jawahar are witnesses who saw the accused beating *Mst.* Rajo near the nalla. Again Khoja and Rasila are witnesses who saw the accused beating his wife for the second time at some distance from the nalla. No reason has been shown as to why the evidence of these witnesses should not be relied upon. Besides, the evidence of these witnesses is supported by the medical evidence. At the *post mortem* examination injuries were found on the body of the girl all

over and the existence of this large number of injuries has not been explained. There can be no doubt that the injuries which were found on the body of *Mst.* Rajo were caused by the accused and that the girl subsequently died of these injuries.

In the result the conviction of the accused person is upheld and in view of the nature of the offence the punishment awarded is very mild. The appeal is dismissed. The appellant shall be informed of this order in jail.

Appeal dismissed.

---

39 P. L. R., J. & K., 65.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom and
Mr. Justice Janki Nath Wazir.

CHOUGATTA *versus* GULAB SINGH & OTHERS.

Civil Second Appeal No 40 of 1993.

Jammu, 12th *Baisakh* 1994.

Transfer of occupancy rights in contravention of the provisions of section 60 of the Tenancy Regulation are not void but are merely voidable at the instance of the landlord according to section 66 of the Tenancy Regulation. According to the Tenancy Regulation the reversioners of an occupancy tenant have no right to challenge a transfer of occupancy rights by an occupancy tenant. 1930 Lahore 942 and *1933 Lahore 184, followed.*

Appeal against the decree of District Judge, Jammu, dated 26th *Har* 1993.

Mr. R. L Anand, Advocate.

Mr. A. R. Oswal, Advocate.

JUDGMENT.

By virtue of a will dated 26th *Chet* 1983 Phulla transferred his occupancy rights in the land in favour of the plaintiffs. On Phulla's death the plaintiffs filed a suit for possession of the land on the ground that the defendant Chougatta was wrongfully in possession of the land in dispute. Chougatta contested the suit on the ground that the land was ancestral and being a collateral of Phulla he was also entitled to remain in possession of the land. It was also contested that Phulla had no power to alienate his rights of occupancy by means of a will in favour of the plaintiffs. It was further claimed by Chougatta that in case he was dispossessed from the land he should be paid by the plaintiffs a sum of Rs. 1046

which he had spent on behalf of Phulla in a litigation with one Sarban and further that he should be paid back the amount of Rs. 1100 which he had paid to Phulla's creditors Mangtu and Chiroo. The trial court dismissed the plaintiff's suit. On appeal the learned District Judge Jammu set aside the order of the trial court and decreed the plaintiffs' suit. The defendant Chougatta has now come in second appeal to this court.

The first point urged by the appellant's learned counsel is that the land in dispute is ancestral as Dhakhni the common ancestor of Phulla and Chougatta had occupied the land. This claim has not been established by means of any satisfactory evidence. On the other hand the entry in the settlement records of S. 1928 clearly negative the claim that Dhakhni was in possession of the land in dispute. It was Chougatta's claim that the common ancestor Dhakhni was in possession of the land and it was for Chougatta to satisfactorily establish that claim. It was held in *1928 Lahore* ? that in the case of occupancy land burden of proving positively that it was occupied by the common ancestor is on the person who alleges that the land was occupied by the common ancestor. Mere mention of the name of the common ancestor in the pedigree table is not sufficient proof that the ancestor was in occupation of such land, as in cases of occupancy lands no conjecture can be made regarding the possession. We find that Chougatta's claim that the common ancestor Dhakhni was in possession of the land has not been proved.

It has also been urged on behalf of the appellant that the alienation made by Phulla by means of his will dated 26th *Chet* 1933 was invalid as such an alienation is prohibited by section 60 of the Tenancy Regulation. It is admitted that the plaintiffs are also collaterals of Phulla. It is true that according to section 60 of the Tenancy Regulation, transfer of occupancy rights by sale, mortgage or gift without the permission of the landlord is not permitted, but such transfers are not void but are merely voidable at the instance of the landlord according to section 66 of the Tenancy Regulation. According to the Tenancy Regulation the reversioners of an occupancy tenant have no right to challenge such irregular transfer by an occupancy tenant. It has been held in *1930 Lahore 942* that when an alienation of occupancy rights is made by a widow in contravention of section 59 of the Punjab Tenancy Act the occupancy tenant's reversioners cannot control, such alienation although it is voidable at the instance of the landlord.

Similarly it was held in *1933 Lahore 184* that alienation of occupancy rights in contravention of section 59 cannot be challenged by reversioners where the parties are not governed by custom. So it is clear that the reversioners have no right under the provisions of the Tenancy Regulation to challenge an alienation of occupancy rights by the occupancy tenant. In the present case it has not been proved by the defendant appellant that there was any custom prevalent between the parties by which Phulla was precluded from making the alienation of his occupancy rights in favour of the plaintiffs.

The third point urged is with regard to the payment of money which is said to have been made by Chougatta on behalf of Phulla to certain persons. In the first case a sum of Rs. 1046 is claimed as having been paid by Chougatta to one Sarban in the litigation between Phulla and Sarban. Sarban admitted that a sum of Rs. 1000 was paid to him but he could not state whether the amount was paid by Chougatta from his own pocket or was paid on behalf of Phulla. It is admitted that in that litigation Chougatta was the Mukhtar of Phulla and when it has not been proved by Chougatta that the expenditure was incurred by him from his own pocket it will be presumed that any payment made in connection with that litigation was made from the money of Phulla. Then it is claimed that a sum of Rs. 1100 was paid by Chougatta by way of Phulla's debts. This also has not been proved that any payment was made from Chougatta's private income. It is admitted by the appellant's own witness Mangat Ram and Chourangi that Chougatta was in possession of Phulla's land for about ten or eleven years and that Chougatta himself utilized all the produce of that land. So even if Chougatta paid any debts in regard to Phulla it will be presumed to have been paid out of the produce of Phulla's land which was in possession of the appellant for a long time.

In the result we see no reason to interfere with the finding of the lower appellate court and dismiss the present appeal with costs.

Appeal dismissed.

———

39 P. L. R., J. & K., 68.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

SPECIAL BENCH.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
Mr. Justice K. L. Kichlu and Mr. Justice Janki Nath Wazir.

S. MOHINDARSINGH *versus* HON'BLE THE PRIME MINISTER, H. H's GOVERNMENT, J. & K.

Miscellaneous Application No. 13 of 1993.

Jammu, 5th *Baisakh* 1994.

An article containing words which tend to incite the commission of violent acts or tend to bring into hatred or contempt a class of His Highness' subjects in the State, clearly falls under section 10, clause 1 of the Press and Publication Regulation No. 1 of 1989 and in regard to such an article action can be taken under section 14, clause 3 of the aforesaid Regulation.

Application against the order of Hon'ble Prime Minister dated 8th December 1936 under Press and Publication Regulation.

Mr. A. N. Kak, Advocate.

Mr. A. R. Oswal, Government Advocate.

JUDGMENT.

This is an application filed by Mr. Mohindersingh printer and publisher of a Vernacular paper called the "Wattan" Jammu, under section 21 of the Jammu and Kashmir State Press and Publications Regulation No. I of 1989. By the order of the Hon'ble Prime Minister the printer and publisher of the paper was served with a notice under section 14 clause 3 of the aforesaid Regulation to deposit a security of Rs. 500 with the District Magistrate Jammu on or before the 28th of December 1936. This date was subsequently extended to 28th January 1937 and on that date the requisite security was deposited with the District Magistrate, Jammu. The printer and publisher of the "Watan" has now come to this court to challenge the validity of the order under which the security was demanded from him.

The order of the Hon'ble Prime Minister dated 8th December 1936 is based on two articles published in the "Watan". The first article was published in the "Watan" of 20th May 1936 and the second article was published in the "Watan" of 23rd June 1936. At the foot of the order dated 8th December 1936 the headlines of the two articles are given.

The head lines of the article published in the "Watan" of 20th May 1936 is given as "Views opposed to that of the Muslim Conference regarding demand for responsible Assembly" while the heading of the article published in the "Watan" of 23rd June 1936 is "Political aspect of Sikh agitation."

The first point urged by the applicant's learned counsel Mr. A. N. Kak is that the articles published in the Vernacular paper "Watan" were not correctly translated in the office of the Hon'ble Prime Minister and that the order of the Hon'ble Prime Minister was secured on wrong translation of the articles. There is no English translation of the articles in question on the file and we therefore do not know as to what English translation, if any, was put up before the Hon'ble Prime Minister. There is however no doubt that the head line of one of the articles has not been correctly translated. The headline of the article published in the "Watan" of 20th May 1936 is "*mutalba zimawar Assembly men Muslim Conference ke mutzad pehlu*" and the english translation of this as given at the foot of the order dated 8th December 1936 is not correct.

We shall now deal with the two articles referred to above. We shall first take the article published in the "Wattan" dated 20th May 1936 We have carefully examined this article and we do not find anything in it which might fall under any clause of section 10 of the Press and Publication Regulation No. 1 of 1989. In this article the editor of the paper has criticised the views of another political body and has given reasons for disagreeing with the views of that body. In our opinion the article does not exceed the limit of temperate and fair criticism of the views of another body and we do not find anything in it which might be considered objectionable in view of the provision contained under section 10 of the Regulation. If the order demanding security would have been based merely on this article, we would have had no hesitation in setting aside that order.

Now we take up the other article headed "the political aspect of Sikh agitation" published in the "Wattan" of 23rd June 1936. We have carefully gone through this article as published in the vernacular paper and we think that this article contains most objectionable language. There are portions of the article which clearly fall under sub-sections (a) and (c) of clause 1 of section 10 of the Press and Publications Regulation No. 1 of 1989, as they tend to incite the commission of violent acts or tend to bring into hatred

or contempt a class of His Highness' subjects in the State. We do not propose to give any further publicity to these objectionable portions of the article by reproducing them here in this judgment but we have no doubt in our minds that lines 28 to 33 of the article as published in the Vernacular paper clearly fall under sub-section (c) of clause 1 of section 10 of the Regulation while the lines 8 to 10 of column 2 of the article clearly tend to incite a section of the public to commit act of violence in the State, and as such they clearly fall under sub-section (a) of clause 1 of section 10 of the Regulation. It was argued on behalf of the applicant that the portions referred to above might be construed as a temperate criticism or an expression of reasonable disapprobation of the actions of the Government established by law in the State. But we do not agree with this view. We never deny the right of fair, reasonable and temperate criticism but anybody who abuses that right or uses it as a means of exciting masses to acts of violence should suffer the consequences of his acts. It is very easy to excite ignorant and illiterate masses to acts of violence but the consequences of that excitement should always be borne in mind. We are convinced that some portions of the article dated 23rd June 1936 clearly fall within the purview of section 10 of the Press and Publication Regulation No. 1 of 1989 and as such the order demanding security from the printer and publisher of the paper was fully justified.

We dismiss this application but in view of the fact that one of the articles referred to in the order has been found by us to be un-objectionable we make no order as to costs.

Application dismissed.

---

39 P. L. R., J. & K., 70.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

TRILOK NATH *versus* STATE.

Criminal Second Appeal No. 108 of 1993.

Jammu, 16th *Baisakh* 1994.

In order to constitute an offence of theft under section 379 of the Ranbir Penal Code it is essential that the property should be taken by the accused out of the possession of another person. When it is found that the property in question was already in the possession of the accused person the offence will not amount to theft under section 379 of the Ranbir Penal Code.

Appeal against the order of Sessions Judge, Jammu, dated 14th *Magh* 1993.

Mr. Ram Nath Langer.

Government Advocate.

JUDGMENT.

The accused was convicted by the City Magistrate Jammu under Section 454 of the Ranbir Penal Code and sentenced to three years' rigorous imprisonment and a fine of Rs. 10. On appeal the learned Sessions Judge Jammu converted the conviction to one under Section 379 of the Ranbir Penal Code and reduced the sentence to three days' imprisonment already undergone by the accused. The sentence of fine was maintained. The accused has now filed a further appeal in this court.

The accused and the complainants Devi Saran and Baldev Ram are relations. They are the Pujaris of the temple known as Dewan Jawala Sahai's temple. Disputes have arisen between the parties from time to time about the allotment of the income of the temple and consequently they have not been on good terms for some time. In the present case the complainants alleged that the accused broke open the lock of a room adjoining the temple and from that room removed some wood belonging to the temple. The plea of the accused was that he had committed no offence as according to the terms of the sanad relating to the management of the temple he was entitled to dispose of the wood and that as a matter of fact the sale proceeds were utilized for the purposes of the temple. The lower appellate court found that no offence under section 454 was comitted by the accused but convicted the accused for theft under Section 379.

The learned Government Advocate has frankly admitted that in the present case the accused can neither be convicted under section 454 nor under section 379 of the Ranbir Penal Code. There is ample evidence on the file to show that the wood alleged to have been stolen was in the actual possession of the accused himself and such being the case the learned Government Advocate admitted that the offence in the present case does not amount to theft. Besides keeping in view the material on the file the learned Government Advocate did not press for the conviction of the accused under any other offence. I agree with the learned Government Advocate and think that the offence under Section 379 of the Ranbir Penal Code has not been established in the present case. I there-

fore accept this appeal and setting aside the conviction of the accused under section 379 of the Ranbir Penal Code acquit him. The fine, if already paid, shall be refunded to the accused appellant.

Appeal accepted.

---

39 P. L. R., J. & K., 72.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

RAVISINGH *versus* ISHRISINGH

Criminal Revision No. 48 of 1993.

Jammu, 17th *Baisakh* 1994.

Permission for prosecution under section 195 of the Code of Criminal Procedure should only be granted when such a course is found necessary in the interests of justice. Permission should not be granted if the application is actuated merely by personal spite.

Revision against the order of Sessions Judge, Jammu, dated 7th *Maghar* 1993.

Mr. Dina Nath, Advocate.

Mr. Moh'd Yunis.

JUDGMENT.

In a criminal complaint filed by one Ravisingh against Abesingh, Ishrisingh appeared as a prosecution witness. This witness made a statement before the Tehsildar Magistrate Samba on 3rd *Sawan* 1992 and that statement was against the accused Abesingh. On 11th *Maghar* 1992 Ishrisingh made another statement before the Munsiff Magistrate Samba but this statement was somewhat favourable to the accused Abesingh. Upon that the complainant applied for grant of permission under section 195 of the Code of Criminal Procedure for prosecution of Ishrisingh. The learned Sessions Judge Jammu refused to grant permission and against that order the present revision application has been filed.

As a matter of principle permission for prosecutions in such cases should only be granted when such a course is found necessary in the interests of justice. In the present case it appears that the permission is sought by the complainant for the prosecution of the witness merely out of personal spite. In these circumstances I think that the learned Sessions Judge was correct in refusing to grant permission. The present revision application is dismissed.

Application dismissed.

---

39 P. L. R., J. & K., 73.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice Janki Nath Wazir.

FATEH SHER KHAN *versus* *Mst.* FEROZ BEGUM & OTHERS.

Civil Second Appeal No. 78 of 1993.

Jammu, 12th *Baisakh* 1994.

No decree for restitution of conjugal rights should be passed until the factum of alleged marriage is established by means of satisfactory evidence.

Appeal against the order of District Judge, Jammu, dated 29th *Poh* 1993.

Mr. Ghulam Abbas, for the Appellant.

Respondents in person.

JUDGMENT.

The plaintiff instituted a suit for the restitution of conjugal rights against *Mst.* Feroz Begum. The defendant totally denied her marriage with the plaintiff but pleaded that she had been married to her uncle's son, Faqir Mohammad. The trial court decreed the plaintiff's suit, but on appeal that decree was set aside and the plaintiff's suit was dismissed. The plaintiff has now come in second appeal to this court.

In decreeing the plaintiff's suit, the trial court seems to have been largely influenced by the fact that on 17th *Bhadon* 1990 the girl's father Nizam Din made an application to the Tehsildar Bhimber in which the girl's marriage with the plaintiff was admitted, but the trial court over-looked the fact, which is admitted by the parties, that after the death of his first wife Nizam Din kept the plaintiff's mother as his wife and it was under the influence of that woman that Nizam Din wanted to favour the plaintiff even at the sacrifice of his own daughter's interests. So much importance should not have been attached to any statement made by Nizam Din in any other proceeding which was made under the influence of the plaintiff's mother. In the present litigation the fact of the girl's marriage with the plaintiff was stoutly denied by the girl's father Nizam Din.

In order to succeed in his claim, it was necessary for the plaintiff to establish the fact of his marriage with *Mst.* Feroz Begum. But we think that the plaintiff has not been able to establish this fact by means of any satisfactory

evidence. In the first place, the plaintiff's alleged marriage with the girl was not entered in any proper Nikha Register. The plaintiff however produced a Kabinnama dated 5th *Assuj* 1984 to prove the fact of his marriage with the girl. The respondents allege that this document is an entire forgery. The document is on a black piece of paper and it should not be difficult to forge a document like that. If this document was a genuine document it ought to have been attested by some responsible people of the village and the relatives of the girl. To prove this document, one Hashmatali was produced but it is admitted that this Hashmatali is not a resident of the village. He belongs to a different village and it has not been explained as to how his attestation was secured on the document.

The girl appeared in the court and she denied in very strong terms her marriage with the plaintiff. She stated that a false case has been made against her by the plaintiff. It was admitted that some years ago there were some negotiations for the plaintiff's marriage with *Mst.* Feroz Begum but the condition at the time was that Feroz Begum would be married to the plaintiff if the plaintiff's sister was married to a son of the girl's uncle, Hussaina. But as the plaintiff's sister was married elsewhere the negotiations fell through. The girl has now been married to Hussaina's son Faqir Mohammad while Hussain's daughter has been married to the girl's brother Niaz Ali.

We find that the plaintiff's marriage with *Mst.* Feroz has not been established and we see no reason to interfere in the order of the lower appellate court.

The appeal is dismissed with costs.

Appeal dismissed.

39 P. L. R. J. & K., 75.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice, and Mr. Justice K. L. Kichlu.

RAM CHAND AND OTHERS *versus* RAM CHAND.

Civil First Appeal No. 44 of 1993.

Jammu, 15th *Baisakh* 1994.

When the parties to a decree do not stick to the terms of the decree but make an entirely new contract for the settlement of the debt, the original decree is extinguished by the new arrangement between the parties. Also that when the original decree ceases to exist no application for its execution can be entertained.

Appeal against the order of Senior Sub-Judge, Jammu, dated 29th *Phagan* 1993.

Mr. Roop Chand Nanda.

Mr. Ladhasingh.

JUDGMENT.

On 26th *Chet* 1982 a decree for Rs. 6236 with costs was passed against the defendant. During the execution proceedings the parties entered into a compromise on 8th *Bhadon* 1988 by which they agreed to make a fresh arrangement for the payment of the debt. By virtue of the compromise the decree holder agreed to accept a sum of Rs. 6000 from the judgment-debtor in full satisfaction of the decree and out of the sum of Rs. 6000 a sum of Rs. 3000 was paid to the decree holder at once and the balance of Rs. 3000 was to be paid by six monthly instalments of Rs 125. The first instalment was to be paid in *Chet* 1988 and the subsequent instalments were to be paid with an interval of six months. In view of the fresh arrangement made between the parties the Senior Subordinate Judge Jammu by his order dated 8th *Bhadon* 1988 consigned the execution application to the record room in full satisfaction of the decree.

On 28th *Chet* 1992 a fresh application for the execution of the decree was filed by the decree holder on the ground that the instalments due were not paid. This application was found to be incompetent by the lower court and dismissed on that account. This is an appeal against the order of the lower court.

It is contended on behalf of the appellants that the words "*Ba ifai kamal*" (full satisfaction of the decree) were entered in the order of 8th *Bhadon* 1988 through some mistake and that that mistake can be rectified according to the provisions made under sections 151 and 152 of the Code of Civil Procedure. A number of rulings have been quoted to the effect that a mistake whether clerical or otherwise can always be set right by a court irrespective of any time limit. We quite agree that a clerical or arithmetical mistake can always be rectified irrespective of any time limit but the point to be seen is whether any mistake has actually occurred as alleged. In the present case we think that no question of a mistake arises. It is clear that an executing court has no power to alter or vary a decree. But the parties are always at liberty to make fresh contracts between themselves. In the present case an entirely new contract came into existence when the parties made the compromise on 8th *Bhadon* 1988 and such being the case the original decree was extinguished. In these circumstances the learned Senior Subordinate Judge was justified in consigning to the record the execution application pending in his court in full satisfaction of the decree. So it is clear that the words "full satisfaction of the decree" were deliberately written by the lower court in the order dated 8th *Bhadon* 1988 and there was no mistake or error about it. The decree holder obtained a copy of the passing of the order but he never took any action for the correction or setting aside of that order. This shows that the decree holder himself treated the arrangement made on 8th *Bhadon* 1988 as a fresh contract between the parties and so he was satisfied with the order of the court dated 8th *Bhadon* 1988.

The original decree no longer existing the present application for execution is obviously incompetent..

The appeal is dismissed with costs.

Appeal dismissed.

———

39 P. L. R., J. & K., 77.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

CHUHAR HAKIM *versus* STATE.

Criminal Second Appeal No. 97 of 1993.

Jammu, 29th *Chet* 1993.

A married woman was taken away by the accused persons from her husband's house. In second appeal it was argued on behalf of the accused persons that no offence had been committed by the accused persons as the girl had come out with them of her own free will and consent. It was found that consent of the girl was obtained by fraud and decietful means

Held, that, the consent obtained by fraud or deceitful means does not constitute free consent and that in the circumstances the accused persons were guilty of an offence of abduction under section 366 of the Ranbir Penal Code.

Appeal against the order of Additional Sessions Judge, Jammu, dated 12th *Phagan* 1993.

Messrs. Loknath Sharma and *Ghulam Abbas.*

Government Advocate.

JUDGMENT.

Chuhar and Hakim were convicted by the trying Magistrate under section 366 of the Ranbir Penal Code and sentenced to 3 years rigorous imprisonment and $2\frac{1}{2}$ years rigorous imprisonment respectively. They were also sentenced to a fine of Rs. 20 each or in default to undergo one month's further rigorous imprisonment. On appeal the learned Additional Sessions Judge of Jammu upheld the conviction but reduced the sentence of both the accused persons to two years' rigorous imprisonment. The punishment of fine was allowed to stand. The accused persons have now filed a further appeal in this court.

The facts of this case are quite simple. *Mst.* Viro a young girl of about 19 years of age is the wife of one Lahori Manhas of village Palohra, Tehsil Jammu. The house of Chuhar accused is near the house of Lahori. On the night of 9th *Assuj* 1993 when Lahori had gone out to the fields to see the Bajra crop, *Mst.* Viro disappeared from her husband's house. The prosecution story is that the girl was abducted by four persons, Chuhar, Hakim, Sain and Gama. The girl was taken by the accused persons to different places until she was caught hold of by Mr. Phami Chand, Sub Inspector

of Police, near Bari Brahmanan on 15th *Assuj* 1993, *i. e.*, 6 days after her disappearance from her husband's house. All the four persons named above were challaned but Sain and Gama were acquitted and Chuhar and Hakim appellants were convicted as said above. We are at present concerned with the case of Chuhar and Hakim appellants. Hakim accused was an employee in the Central Jail Jammu while Cnuhar accused was employed in the State Press Jammu. Both the accused persons Chuhar and Hakim totally denied any knowledge of the occurrence and pleaded that he girl was never taken away by them.

The girl *Mst.* Viro is the most important witness in the case. She gives a detailed account of the whole occurence from the beginning to the end and her evidence is fully corroborated in main particulars by the evidence of independent witnesses. The girl stated that sometime before the occurrence, *Mst.* Rajo, wife of Chuhar accused, used to come to her and tell her that her husband Lahori was old and poor and she therefore lived an unhappy and miserable life. It was suggested by *Mst.* Rajo that the girl might be taken and married to a rich young man called Natha Singh and that if the girl married Natha Singh she would be provided with ample clothes and ornaments and she would lead a life of ease and comfort. With repeated fraud and deception the girl fell into the trap of *Mst.* Rajo. On the evening of 9th *Assuj* 1993 when *Mst.* Viro's husband was in the fields *Mst.* Rajo went to her and told her that Nathasingh had sent four men to escort her to his house, and *Mst.* Rajo persuaded the girl to go with her to her house where the four men sent by Nathasingh were waiting. The girl went to *Mst.* Rajo's house where the accused persons were present and the girl was at the time placed in a cattle shed. About the midnight the accused persons took *Mst.* Viro from Chuhar's house and brought her to a takia near Jammu. In this takia the girl was kept for three nights and the girl stated that during their stay in the takia the accused persons committed adultery with her. From the takia the girl was taken in the night time by the accused persons to the house of one Moh'd Hussain in Jammu. *Mst.* Viro was made to wear a burqa at the time and she was taken inside the zanana of Moh'd Hussain's house while the accused persons sat with Moh'd Hussain in the outer portion of the house. The time when the accused persons and *Mst.* Viro

reached Moh'd Hussain's house is said to be about 3 or 4 o'clock in the morning. When *Mst.* Viro met Moh'd Hussain's wife she told her that she had been abducted by the accused persons. Upon that Moh'd Hussain's wife *Mst.* Zanab Bibi sent for her husband and told him to send the girl and her companions out of the house as the girl was an abducted one. The girl was therefore taken away from there and she was then taken to village Chhani by the accused persons. In Chhani the girl met one Shahab Din constable and she told him the story of her abduction. Shahab Din offered to take her to Jammu and restore her to her relations and when she was coming in a tonga to Jammu the girl was recognized by one Kaku and the matter was reported to the Sub Inspector of of Police Mr. Phumi Chand who happened to be there in connection with the investigation of some other case.

The statement of the girl *Mst.* Viro is quite clear and convincing and no reason has been shown as to why her statement should not be relied upon. The girl had absolutely no animus or enmity against any of the accused persons and she had no reason to concoct a false story against the accused persons especially when it so materially affected her own honour and the honour of her family. Besides this there is ample evidence to support the statement of *Mst.* Viro. First of all there is the evidence of Sardar Begum who is a neice of Chuhar accused. Sardar Begum definitely stated that she was in the house of *Mst.* Rajo on the day when *Mst.* Viro was abducted. This witness is near relation of Chuhar accused and she had no business to give a false statement against her uncle. This witness stated that about the evening time *Mst.* Rajo was away from her house and came back after some time. Shortly after her return *Mst.* Viro also came to *Mst.* Rajo's house and she was put in the cattle-shed. According to this witness the accused persons were in the house at the time when *Mst.* Viro was put in the cattle-shed. Then about mid-night *Mst.* Viro was seen going with the accused persons between Palohra and the takia near Jammu. Two young boys Chhajusingh and Koharsingh were returning to the village after seeing a Cinema performance in Jammu and they both definitely stated that they saw the accused persons taking *Mst.* Viro with them. Then there is the evidence of the sain of the takia named Bhulla Shah. This witness saw the accused persons and the women in the takia and asked them to leave

the place. Then there is the evidence of Moh'd Hussain and his wife *Mst.* Zaina Bibi. *Mst.* Zaina Bibi stated as to how *Mst.* Viro was wearing a burqa at that time, how she was taken to her house at night time and how on her enquiry the girl told her that she had been abducted by the accused persons. Upon that *Mst.* Zaina Bibi asked her husband to turn the girl and her companions who were waiting outside out of the house. The statement of Moh'd Hussain is also to the same effect. After that the girl related the story of her abduction to Shahab Din constable and to the Sub-Inspector of Police.

As has been pointed out above the present accused appellants totally denied all knowledge of the occurrence. In the present appeal it is however urged by the appellants' learned counsel Mr. Loknath Sharma that as the girl *Mst.* Viro who has attained the age of majority left her husband's house and accompanied the accused persons of her own free will and consent the accused persons could not be held guilty under section 366 of the Ranbir Penal Code. But this is going beyond the plea urged by the accused persons themselves. They never pleaded that the girl had gone with them of her own free will and consent but their plea was that the girl never went with them. Besides it is clear from the evidence that *Mst.* Viro's consent whatever it was, was obtained by the accused persons through fraud and deception. The definition of "abduction" is given in section 362 of the Ranbir Penal Code and it is as follows:—

"Whoever by force compels or by any deceitful means induces any person to go from any place is said to abduct that porson."

In the present case it is quite clear from the evidence that *Mst.* Viro was induced to go with the accused persons by deceitful means. When the girl accompanied the accused persons a big fraud had been practised upon her and by deceitful means she was persuaded to believe that she was being taken to one Natha Singh with whom she would lead a life of ease and comfort. The girl was under that deception at that time but the accused persons knew all the time that a trick was being played upon her. The dodge about Natha Singh was only a farce and the accused persons clearly wanted the girl for their own evil designs. The accused persons started committing adultery with the girl while she was in the takia

with them. So long as the girl was in the takia with the accused persons she was absolutely in their clutches and she found it difficult to raise hue and cry against them. But it appears from the girl's statement that after being detained in the takia and seeing the behaviour of the accused persons her delusion disappeared and she realized that she had been deceived by the accused persons. So as soon as the girl reached Moh'd Hussain's house and had an opportunity to talk to Moh'd Hussain's wife in private *Mst.* Viro at once told Moh'd Hussain's wife *Mst.* Zainab Bibi that she had been abducted by the accused persons. So it is clear that *Mst.* Viro was brought out by the accused persons by fraud and deceitful means and the offence of abduction has been fully established against the accused persons. Both the accused persons have been rightly convicted and in the circumstances of the case the punishment as already reduced by the Additional Sessions Judge is not excessive. The appeal is dismissed. The appellants shall be informed of this order in jail. A copy of this judgment shall be sent to the Hon'ble Ministers-in-charge of the State Press and the Central jail Jammu.

Appeal dismissed.

---

39 P. L. R., J. & K., 81.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice Janki Nath Wazir.

FAQIROO *versus* STATE.

Criminal First Appeal No. 68 of 1993.

Jammu, 4th December 1936/20th *Maghar* 1993.

When the accused hits an old woman with a half burnt piece of stick and inflicts a severe blow on her head.

Held, that, the accused may not have intended to kill the deceased but he ought to have known that a severe blow on the head of an old woman was likely to cause her death.

Further, held, that in these circumstances the accused was rightly convicted under Section 304 (2) of the Ranbir Penal Code.

Appeal against the order of Sessions Judge, Srinagar, dated 18th *Sawan* 1993.

Nemo, for the Appellant.

Government Advocate.

ORDER.

Faqiroo accused has been convicted under Section 304 (2) of the Ranbir Penal Code for causing the death of his own mother *Mst.* Halima and sentenced to five years' rigorous imprisonment. This is an appeal against that conviction and sentence.

Briefly stated the facts of the case are as follows:—

Mst. Halima was a very old woman and used to live with her brother Star Moh'd. The accused used to live in a separate house. On the morning of 22nd *Chet* 1992 the accused came to Star Moh'd's house and asked his mother to get some milk for him. She refused to do that as the evening before she had experienced great difficulty in getting milk for him from some one in the village and upon this refusal on the part of his mother the accused wanted to snatch away her blanket. The woman refused to part with the blanket and abused her son. The accused got into temper and got hold of a half burnt piece of stick which was lying nearby and inflicted a severe blow on the head of his mother, and as a result of the injury the woman died on the morning of the next day. According to the medical testimony the death of the deceased was caused by the fracture of the skull and concussion of the brain.

The accused pleaded not guilty. His plea was that the woman had been killed by her brother Star Moh'd. who wanted to rob her of the money which was in her possession. But this plea has not been established by means of any evidence. On the other hand it is quite clear from the evidence of the prosecution witnesses that the blow on the head of the old woman was inflicted by the accused. Star Moh'd Jana and *Mst.* Rani who were present at the time of the occurence are the eye-witnesses of the incident and they all describe the manner in which the blow was inflicted by the accused on the head of his mother. Besides these witnesses Raja and Nur Moh'd. Lambardar came to the scene of occurrence immediately after the injury was caused on the head of the old woman and the accused definitely stated before both these persons that the blow on the head of *Mst.* Halima was inflicted by himself.

The accused appellant may not have intended to kill his mother but there can be no doubt that he ought to have known that a severe blow on the head of an old woman was

likely to cause death. In these circumstances the accused appellant has been rightly convicted under Section 304 (2) of the Ranbir Penal Code.

The punishment is not excessive. The appeal is dismissed. Let the appellant be informed of this order in Jail.

Appeal dismissed.

---

39 P. L. R., J. & K., 83.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

STATE *versus* FIRM BHAGAT SUKHDYAL AMIR CHAND OF SRINAGAR.

Civil Original Suit No. 6 of 1993.

Jammu, 3rd *Baisakh* 1994.

When the parties to a written agreement specifically stipulate that any difference arising between them in regard to the terms of the agreement shall be referred to arbitration, any of the parties may apply, according to Para. 17 of Schedule II of the Code of Civil Procedure, to any court having jurisdiction in the matter that the agreement be filed in the court. In such a case the main points to be seen are whether the agreement was actually executed by the parties, whether a stipulation was made between the parties that any dispute arising between the parties in respect of any term or condition of the agreement shall be referred to arbitration and whether any such disputes had actually arisen between the parties.

Mr. A. R. Oswal, Government Advocate, with *Mr. C. R. Kohli*, Deputy Director of Industries and Commerce.

Mr. Barkat Ali, Advocate with *Bhagat Hukam Chand.*

JUDGMENT.

This is an application made under Para. 17 of Schedule II of the Code of Civil Procedure for filing an agreement dated 17th December 1930 entered in to between the applicant and the non-applicants and for referring the matter to the arbitration of a Judge of the High Court of Judicature. The non-applicants filed their written statement and wanted time to produce a counsel to argue the legal aspect of the case. Mr. Barkat Ali has appeared to day on behalf of the non-applicants.

Mr. Barkat Ali admitted the execution of the agreement dated 17th December 1930 between the parties and also

admitted that according to Clause 17 of the agreement it was stipulated between the parties that in the event of any dispute arising between the parties in respect of any term or condition of the agreement the said dispute shall be referred to the arbitration of a Judge of the High Court of Judicature Jammu and Kashmir State. Mr. Barkat Ali also admitted that the non-applicants having failed to carry out some of the terms of the agreement and also that in regard to certain matters connected with the agreement there have been disputes between the parties. It was however urged on behalf of the non-applicants that there has been some delay in the filing of the present application and that that delay has not been explained by the applicant. In regard to this point the learned Government Advocate submitted that before the filing of the present application negotiations were going on with the non-applicants and every possible facility was given to them to meet their obligations but that inspite of the grant of all the facilities the non-applicants totally failed to meet their obligations and so there has been no delay on the part of the State in filing the application. The non-applicants' learned counsel did not challenge the correctness of this reply. I think that the question of delay does not arise in this case.

The other point urged is that there has been no refusal on the part of the non-applicants to refer the matter to the arbitration and so the present application was not necessary. I think that this contention is also not tenable. No question of refusal arises in cases of this kind. It has been laid down in Para. 17 of Schedule II of the Code of Civil Procedure that where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement or any of them may apply to any court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in the court. Now in this case the execution of the agreement is admitted, the specific stipulation in the agreement that any dispute arising between the parties in respect of any term or condition of the agreement shall be referred to the arbitration of a Judge of the High Court of Judicature Jammu and Kashmir State is also admitted, and it is also admitted that disputes have arisen between the parties in regard to the terms of the agreement. So the question of refusal on the part of the non-applicants to go to arbitration does not arise. Disputes have arisen between the parties in regard to the agreement and according to the terms of the

agreement itself the matter has to be referred to the arbitration as provided in the agreement. In this connection reference has been made to two letters of the non-applicants dated 11th July 1935 and 26th August 1935 written by the non-applicants to the Director of Industries and Commerce Jammu and Kashmir State. In both these letters it was contended by the non-applicants themselves that the disputes which had arisen between the parties in regard to the agreement should be referred to the arbitration as provided in the agreement.

As no sufficient cause has been shown on behalf of the non-applicants against the filing of the agreement dated 17th December 1930, I accept the present application and direct that the agreement dated 17th December 1930 shall be filed and that the matter shall be referred to the arbitration of Mr. Justice K. L. Kichlu, a Judge of High Court of Judicature and award made by him shall be returned to me for further action. Costs in this court to abide the result.

Application accepted.

---

39 P. L. R., J. & K., 85.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

ABDULA SHERA, *versus* STATE.
GUFFAR BAT,

Criminal Revision No. 109 of 1993.

Jammu, 10th *Baisakh* 1994.

When a man is stealthily moving about in the night time in a place where he has no business to be at the time and it appears from the evidence that the man was taking precautions to conceal his presence and house breaking implements are found on the person of that man, it will be supposed that the man was taking such precautions with a view to committing an offence and he can be rightly proceeded against under section 109 of the Code of Criminal Procedure.

Revision against the order of Sessions Judge, Kashmir, dated 12th *Phagan* 1993.

Government Advocate.

JUDGMENT.

Both the accused persons have been bound down by the Sub Divisional Magistrate Anantnag under section 109 of the Code of Criminal Procedure. They were directed to furnish security for good behaviour in the sum of Rs. 200 each for a period of one year but they failed to furnish the requisite

security and were therefore sent to jail. They first appealed to the sessions court Srinagar but their appeals were dismissed. They have now filed a joint revision application in this court.

On the night between the 28th and 29th *Maghar* 1993 the accused persons were seen secretly moving about in a street in the city of Srinagar and the manner in which they were moving about indicated that they were taking precautions to avoid being noticed by anybody. A police patrol party happened to come to that place at the time and on seeing that party the accused persons attempted to run away. They were followed by the Police party and an alarm was raised. At the turning of the road some persons of the mohalla were coming from the opposite direction and with their help the accused persons were caught on the spot. On a search being made house breaking implements were found on the person of the accused persons. The accused persons could not explain as to why they were stealthily moving about in the street at that time in the night, why they started running on seeing the police party and what is most important as to why they were carrying house breaking implements on their person. The accused persons merely denied that any house breaking implements were recovered from their person. But there is very strong prosecution evidence on the file to show that house breaking implements were actually recovered from the person of the accused persons at the time when they were arrested by the police. Khaliq Joo and Karim Wani are two absolutely disinterested witnesses of the mohalla in which the occurrence took place and they both support the prosecution story. No reason has been shown as to why the evidence of these witnesses should not be relied upon. When a man is stealthily moving about in the night time in a place where he has no business to be at the time and it appears from the evidence that the man was taking precautions to conceal his presence and house breaking implements are found on the person of that man, it will be supposed that the man was taking such precautions with a view to committing an offence and he can be rightly proceeded against under section 109 of the Code of Criminal Procedure.

In the present case I see no reason to interfere in the order of the lower courts and the present application for revision is dismissed. The applicant shall be informed of this order.

Application dismissed.

39 P. L. R. J. & K., 87.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice, and Mr. Justice Janki Nath Wazir.

PANDIT PREM NATH AND OTHERS *versus* S. B. BILLIMORIA AND CO.

Civil First Appeal No. 17 of 1992.

Jammu, 4th *Magh* 1993.

An application for the winding up of the Punjab Industrial Bank Limited in the State was made in the High Court under section 271 of the Companies Regulation. The High Court ordered the winding up of the company in the State territories and directed the District Judge to determine and settle the list of the contributories in the State. By order dated 17th Poh 1991 the District Judge finally settled the list of the contributories in the State. Subsequently an application was made on behalf of the liquidators for the certification of the list and on 18th Har 1992 the necessary certificate was granted. Against this order of the District Judge granting the certificate an appeal was lodged by some of the contributories.

Held, that, the order dated 18th Har 1992 was not appealable. The order dated 17th Poh 1991 settling the list of contributories was an appealable order and if the appellants did not avail of the right of appeal which was open to them they could not come in appeal against an order which was clearly not appealable.

Appeal against the order of Additional District Judge, Jammu, dated 18th *Har* 1992.

Mr. Harbans Bhagat, Advocate.

Messrs. Madan Gopal and *Ram Lal Anand, Advocates.*

JUDGMENT.

The Punjab Industrial Bank Limited went into voluntary liquidation in British India. In August 1929 the liquidators who were appointed in British territory applied here for the winding up of the Company in the State under section 271 of the Companies Regulation. On 24th March 1930 corresponding to 11th *Chet* 1986 this court ordered the winding up of the Company in the State territories and directed the District Judge Jammu under the provisions of Section 164 of the Companies Regulation to take further proceedings in regard to the liquidation of the company. The District Judge was

further directed to determine and settle the list of the contributories in the State. Subsequently on a reference made by the District Judge Jammu the direction contained in the order of this court dated 11th *Chet* 1986 to the effect that the list of the contributories in the State shall be settled by the District Judge was again confirmed by the order of this court dated 9th *Baisakh* 1988. In compliance with the directions of the High Court the District Judge Jammu took up the question of settling the list of contributories and after hearing the objections of the parties finally settled the list of contributories by his order dated 17th *Poh* 1991. On 3rd *Jeth* 1992 an application was made on behalf of the liquidator for the certification of the list and on 18th *Har* 1992 the necessary certificate was granted by the District Judge Jammu. Against this order of the District Judge granting the certificate the present appeal has been filed on behalf of some of the contributories.

The first objection urged by the respondents' learned counsel is that while the order dated 17th *Poh* 1991 settling the list of contributories was an appealable order, the order dated 18th *Har* 1992 granting the certificate is not appealable and as such the present appeal is not competent. This point was not disputed by the learned counsel for the appellants. All that is now urged on behalf of the appellants is that certain objections were made by some of the contributories in the court of the District Judge but they were not considered by that court. But this fact by itself does not convert a non-appealable order into an appealable order. We have however examined the record and we find that principal objection urged by the contributories were duly considered by the District Judge Jammu in his order dated 17th *Poh* 1991 when the list of contributories was settled. If the present appellants were not satisfied with the order of the District Judge dated 17th *Poh* 1991 settling the list it was open to them to lodge an appeal against that order. As a matter of fact one of the contributories did file an appeal against that order in this court and that appeal was separately disposed of. It is admitted by the learned counsel for the appellants that the present appellants filed no appeal against the order dated 17th *Poh* 1991 and if the appellants did not avail of the right of appeal which was open to them, they cannot now come in appeal, against an order which is clearly not appealable.

It is also urged by the appellants' learned counsel that the original list of contributories as was settled by the District Judge Lahore could be enforced in execution here in the State and that it was not necessary for the District Judge Jammu to settle any list of contributories in the State. But this is no stage for raising this sort of objection. The District Judge settled the list of contributories in compliance with the specific direction given by the High Court and that order of the High Court cannot now be challenged at this stage.

The present appeal is admittedly incompetent and is hereby dismissed with costs.

Appeal dismissed.

---

39 P L. R., J. & K., 89.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice Janki Nath Wazir.

Mst. NAWAB BIBI AND ANOTHER *versus* RAHMOON AND OTHERS.

Civil Second Appeal No. 61 of 1992.

Jammu, 4th *Magh* 1993.

Courts should exercise great care and caution when passing decree on the basis of compromise entered into by illiterate women. It must be seen whether the compromise is in the interest of the woman concerned or against her interests and also whether the arrangement is of a fraudulent or suspicious nature. Decrees should not be passed on the basis of compromise which has been obtained through fraud.

Appeal against the order of District Judge, Jammu, dated 19th *Magh* 1992.

Mr. Dina Nath, Advocate.

Messrs. Ladhasingh and *Amar Nath.*

JUDGMENT.

The plaintiffs instituted a suit for the cancellation of a compromise decree which was passed on 31st *Sawan* 1991. The plaintiffs' claim was that the compromise on which the decree was based was secured through fraud. The trial court decreed the plaintiffs' suit and set aside the compromise decree dated 31st *Sawan* 1991. On appeal the learned Disrrict Judge of Jammu reversed the decree of the trial court and dismissed the plaintiff's suit. The present second appeal has now been filed by the plaintiffs.

After hearing the counsel of the parties and examining the record we do not agree with the finding of the learned District Judge. By virtue of a will dated 8th *Magh* 1990 one Alam gave away his land to his two sisters *Mst.* Matto and *Mst.* Nawab Bibi in equal shares. *Mst.* Nawab Bibi and her husband Bagga are the plaintiffs in the present suit. In the suit in which the compromise decree was passed on 31st *Sawan* 1991 the present defendants were plaintiffs. Their claim was that their ancestors had given the land in dispute measuring 88 kanals and 9 marlas to Alam by way of a gift and as Alam died childless the land would revert to them. *Mst.* Nawab Bibi and her husband Bagga were defendants in that case. What case was to come up for hearing in the court of Munsiff Mirpur on 5th *Bhadon* 1991, but on 30th *Sawan* 1991 the plaintiffs in that case managed to take *Mst.* Nawab Bibi and her husband Bagga to the house of their own pleader Lala Karamchand and fraudulently obtained a compromise from *Mst.* Nawab Bibi and her husband by which both of them gave up their claim to the land in dispute. It is stated that at the time of the compromise *Mst.* Nawab Bibi's pleader was not present. *Mst.* Nawab Bibi was told at the time that her other sister *Mst.* Matto had already given to the plaintiffs in that case the land of her share and so *Mst.* Nawab Bibi was also persuaded to part with the land of her share in their favour. A promise was made to her at the time that if she would execute the compromise she would be paid a sum of Rs. 550 by her own grand children Shafi, Nabi and Moh'd. *Mst.* Nawab Bibi appeared before us today. She appears to be a woman of about seventy years of age and her husband is said to be still older and unable to walk. He did not appear in the court today. It is admitted by the respondents that a few days before the compromise was effected *Mst.* Nawab Bibi lost her only son and she was therefore naturally in a distressed condition at that time. The respondents thought that that was the best time to play a fraud on the old lady and so they managed to get her in the office of their own pleader and thus obtain a compromise from her which was absolutely against her interests. They seem to have taken good care at the time that *Mst.* Nawab Bibi's pleader did not know of the trick which was being played on her and the whole thing was managed in his absence. Besides it is not alleged on behalf of the respondents that they paid any money of *Mst.* Nawab Bibi at the time of the compromise or agreed to pay her any

money subsequently. By the compromise *Mst.* Nawab Bibi was made to lose all interest in a big plot of land which was in her possession and in return she was to get nothing from the respondents but only a promise from her own grand children to the effect that they would at some later date pay Rs. 550 to her. We have not the slightest doubt that the so called compromise was entirely a fraudulent transaction. The Munsiff who passed the decree on the basis of that compromise was lacking in experience and we think that he did not exercise sufficient discretion to make sure whether the compromise on which the decree was based was a bona fide one or not. In these circumstances we do not think that the compromise decree passed on 31st *Sawan* 1991 can be allowed to stand. We therefore accept this appeal and setting aside the decree of the lower appellate court restore the decree of the trial court dated 15th *Bhadon* 1992. The respondents shall pay to the appellants costs in all the courts.

Appeal accepted.

---

39 P. L. R., J. & K., 91.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice Janki Nath Wazir.

DIWANUN AND MOHD SHARIF *versus* STATE.

Criminal Second Appeal No. 46 of 1993.

Jammu, 24th *Poh* 1993.

The court in exercising its jurisdiction under section 562 Criminal Procedure Code must have regard to the youth, character and antecedents of the offender, and the offence for which he is convicted must be one of those offences specified in the section.

Appeal against the order of Additional Sessions Judge, Jammu, dated 19th *Katik* 1993.

Mr. Ghulam Abbas, Vakil.

Government Advocate.

JUDGMENT.

Diwanun and Moh'd Sharif the two accused persons were convicted under Section 457 Ranbir Penal Code and sentenced to $1\frac{1}{2}$ years rigorous imprisonment and Rs. 50 fine or in default each of them to undergo a further term of three months rigorous imprisonment. On appeal the learned Additional Sessions Judge upheld the conviction and reduced the sentence of Sharif to six months rigorous imprisonment with a fine of

Rs. 20 or in default to undergo an imprisonment for a further period of two months. The accused have come up in second appeal to this court. The facts are fully detailed in the judgment of the lower appellate court and it is hardly necessary to repeat them again. The learned counsel for the appellants did not advance any argument on behalf of Diwanun accused. He has frankly admitted that both the accused are properly convicted but urged on behalf of Moh'd Sharif accused that the lower appellate court had reduced his sentence to six months on the ground that he is a young man of 20 years of age and secondly that his case was very similar to that of Khurshid Alam who was given the benefit of section 562 of the Criminal Procedure Code and thus leniently treated by the trial magistrate. The counsel prayed that his sentence should be further reduced. The learned advocate on the other hand has urged that Moh'd Sharif accused did not deserve the leniency which had been extended to him by the lower appellate court. Section 562 Criminal Procedure Code runs as follows:--

"(1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him atonce to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour."

* * * * * * *

In order to give the benefit under this section to the accused there must not be any previous convictions *i. e.* (1) the accused must be a first offender and (2) the offence for which he is convicted must be one of those offences specified in the section. If these conditions are fulfilled the court has jurisdiction to act under this section in the exercise ot its discretion,

but in exercising its discretion the court must have regard to the points specified in the section *i. e.* the youth, character and antecedents of the offender to the trivial nature of the offence and to any extenuating circumstances under which the offence was committed. The accused appellants have been convicted under section 457 Ranbir Penal Code and the sentence prescribed under the said section is five years but if the accused had intention of committing theft the sentence is 14 years. It has been proved beyond doubt that the accused broke into the house with ths object of committing theft and they actually were caught with some stolen property in their possession. So it is clear that the appellants were guilty of an offence under section 457 Ranbir Penal Code for which they could have been sentenced to 14 years rigorous imprisonment. Section 562 Criminal Procedure Code clearly lays down that a person under 21 years of age who is convicted of an offence punishable with transportation for life is not entitled to the benefit of that section. Therefore in my opinion the lower appellate court has not rightly exercised its discretion in giving the benefit of section 562 to Sharif appellant. As the learned Government Advocate did not press for the enhancement of the sentence of Sharif appellant I do not consider it necessary to enhance the sentence. The offence is proved beyond any shadow of doubt against both the appellants. The appeal is accordingly rejected. The appellants or their counsel may be informed.

Appeal rejected.

---

39 P. L. R., J. & K., 93.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

IMAM DIN S/O FAZAL, CASTE BENS OF CHAK HARNAM—APPELLANT, *versus* LAL MAN S/O BINDRABAN, CASTE MAHAJAN OF MIRPUR—RESPONDENT.

First Civil Appeal No. 102 of 1993.

Jammu, 22nd *Poh* 1993/5th January 1937.

Before a judgment-debtor is adjudged insolvent on the application of the decree holder, it must be proved by the applicant that the judgment-debtor has committed an act of insolvency. Mere fact that he has failed to pay the decretal amount is not sufficient.

Appeal against the order of Additional District Judge, Jammu, dated 3rd *Sawan* 1993.

Mr. Mela Ram.

Mr. Ram Lal Anand.

JUDGMENT.

Lal Man decree-holder presented an application praying that his debtor Imam Din may be declared an insolvent. The allegation was that the judgment-debtor had failed to pay up the decretal amount in spite of the fact that he had been imprisoned in execution proceedings. The learned Additional District Judge of Jammu made an order of adjudication as prayed for. This is an appeal against that order.

It has been urged by the learned Counsel for the appellant that the lower court had erred in holding that in order to obtain an order of adjudication all that the decree-holder had to prove was that the judgment-debtor had failed to pay the decretal amount. His contention is that as the decree-holder had failed to establish that the judgment-debtor had committed any act of insolvency, the trial court was not justified in adjudicating him as an insolvent We see a good deal of force in these contentions. Before a judgment-debtor is, on the application of a decree-holder, adjudged an insolvent, the latter must prove what, if any, act of insolvency was committed by the former. There is no allegation that the judgment-debtor has either transferred his property or committed any other act of bad faith. All that is alleged is that about 10 years back the judgment-debtor purchased a plot of land. This certainly can by no stretch of language he called an act of bad faith on his part. Having regard therefore to the fact that no act of insolvency is proved or even alleged, the judgment-debtor could not be adjudged an insolvent. It is true that in Order 21 (A) of the State Code of Civil Procedure no specific procedure is laid down to govern the applications made by the decree-holders or creditors. There can however be no manner of doubt that the provisions made in rule 8 and subsequent rules, for applications by judgment-debtors, apply *mutatis mutandis* to the case where the decree-holder is the applicant. Under rule 8 a judgment-debtor cannot succeed unless he proves to the satisfaction of the court that he has not, with intent to defraud his creditors, concealed, transferred or removed any part of his property and has not committed any other act of faith regarding the matter of the application. It therefore

follows that in order to succeed a decree-holder creditor must establish that his judgment-debtor has committed an act of insolvency. In the present case as stated above no such act of insolvency is even alleged. Under these circumstances, the trial court was not right in adjudicating the judgment-debtor as an insolvent.

The appeal is accordingly accepted and the order of the lower court set aside. We would however leave the parties to bear their own costs throughout.

Appeal accepted.

---

39 P L. R. J. & K., 95.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice Janki Nath Wazir.

GOPI SHAH *versus* S. HABIBULLAH.
S. HABIBULLAH *versus* GOPI SHAH.

Civil Second Appeal No. 75 of 1993.

Jammu, 20th February 1937.

A house was mortgaged with possession. According to the terms of the mortgage deed the mortgagee was authorised to execute necessary repairs to the house but he was required to keep a proper account of these repairs. On a suit for possession being instituted by the person who subsequently purchased the house a sum of Rs. 400 was claimed by the mortgagee on account of repairs and improvements to the house. No account of the alleged repairs or improvements was produced and it was not established by means of any satisfactory evidence that any expenditure was incurred by the mortgagee by way of repairs or improvements to the house.

Held, that, the mortgagee was not entitled to receive any compensation on account of repairs or improvements to the house.

Appeal against the order of Additional District Judge, Jammu, dated 8th *Magh* 1992.

Mr. Dina Nath.
Mr. Abdul Hamid.

JUDGMENT.

On 13th *Magh* 1978 a house belonging to defendant No. 2 Abdul Gani was mortgaged with possession to defendant No. 1 for a sum of Rs. 275. On 25th *Bhadon* 1986 the plaintiff purchased the house from the owner Abdul Gani. On 6th *Har* 1987 the plaintiff brought a suit for possession and

stated that he was willing to pay the mortgage amount of Rs. 275 to defendant No. 1. The trial court dismissed the plaintiff's suit but on appeal the learned Additional District Judge of Jammu passed a decree in favour of the plaintiff provided he paid a sum of Rs. 525 to defendant No. 1—Rs. 275 as mortgage money and Rs. 250 by way of improvements effected on the house. No order was passed by the lower appellate court in regard to costs. Against this decree the present appeal has been filed on behalf of the plaintiff with the prayer that the order regarding the payment of Rs. 250 as improvements should be set aside and also that costs should be awarded to the plaintiff. The defendant No. 1 has also filed cross-objections with the request that an additional amount of Rs. 150 should be allowed to him by way of improvements. This judgment will govern the decision of the appeal as well as of the cross-objections.

In the mortgage deed dated 13th *Magh* 1987 it was provided that the mortgagee would be entitled to execute ordinary repairs to the house but the mortgagee was required to keep a proper account of the money spent on such repairs. The defendant mortgagee has claimed a sum of Rs. 400 by way of repairs and improvements on the house but no proper account of the alleged repairs has been furnished. The mortgagee is a legal practitioner and he ought to have known that according to the terms of the mortgage deed it was necessary for him to keep a proper account of the money spent on repairs of the house, and that if such account was not maintained he would not be able to claim any amount under that head. Not only that no account has been produced but the defendant mortgagee did not appear as a witness in the court to make a statement as to what was the actual amount spent on the repairs of the house. Four witnesses were produced by the mortgagee in regard to the alleged repairs—Miran Bakhsh carpenter, Badardin carpenter, Miran Bakhsh butcher and Mir Hussain. Miran Bakhsh carpenter stated that some repairs were done by him to the house two or three years ago and the cost of these repairs was put down as Rs. 9. He also stated that a lot of work was done to the roof of the house but he did not state as to when that work was done. He did not even state as to whether the work of the roof was done before the mortgage or after the mortgage. The second witness Badar Din carpenter is more precise. He stated that the roof of the house had fallen down and so a new roof was

put to it. This witness was examined on 13th *Chet* 1987 and he definitely stated that repair to the roof was done thirteen years ago *i.e.* sometime in samvat 1974. So according to this witness the repair to the roof of the house was executed about four years before the house was mortgaged to defendant No. 1. The other two witnesses Miran Bakhsh butcher and Mir Hussain tailor did not do any work in the house and so their evidence is not of much value. Besides both these witnesses could not state as to how much money was spent on the repairs of the house. It is admitted that defendant No 1 first lived in the house as a tenant for a long time before it was mortgaged to him in *Magh* 1978. According to the terms of the mortgage deed the mortgagee is entitled to claim for the repairs only if any proper account of these repairs is produced by him. In the present case no account of repairs has been produced by the defendant mortgagee. Besides the mortgagee has not been able to show that any substantial repairs were executed by him to the house after the mortgage was effected in his favour. The mortgagee's witnesses did not show that any substantial repairs such as repairing the roof were executed after the mortgage of samvat 1978. On the other hand the mortgagee's own witness Badar Din carpenter clearly stated that the repair to the roof was done in samvat 1974 *i. e.* four years before the mortgage. In these circumstances we do not think that the defendant mortgagee is entitled to get anything by way of repairs and improvements to the house and so the order of the lower appellate court allowing the mortgagee a sum of Rs. 250 is not correct.

The other point urged by the appellant's counsel is that the defendant mortgagee has been deliberately prolonging litigation and so the lower appellate court ought to have saddled him with costs. The question of the award of costs was at the discretion of the lower appellate court and we do not wish to interfere in that discretion.

In the result the appeal filed by the plaintiff is accepted to the extent that the plaintiff will be entitled to get possession of the house on the payment of only the mortgage money of Rs. 275 to defendant No. 1 and that nothing will be paid to defendant No. 1 by way of improvements. Defendant No. 1 shall pay to the plaintiff costs in this court. Besides this by the order of this court dated 22nd *Magh* 1993 the respondent was directed to pay a sum of Rs. 16 (sixteen rupees) to the appellant as costs of that day's adjournment. It has been

reported to us that this payment has not so far been made. So this amount of Rs. 16 shall also be paid by the respondent to the appellant.

The cross-objections filed by the defendant No. 1 are dismissed with costs.

Order accordingly.

---

39 P. L. R., J. & K., 98.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu and Mr. Justice Janki Nath Wazir.

Mst. BASANTI AND OTHERS *versus* MAHNGA AND ANOTHER.

Civil Reference No. 148 of 1983.

Jammu, 19th *Poh* 1993.

Section 85 of the Tenancy Regulation—If the landlord questions the validity of a transfer of a right of occupancy whether the suit is in the form merely declaratory or is to dispossess the transferee the suit clearly falls under section 85 clause (3) part (g).

Reference made by the Subordinate Judge, Kathua, dated 5th *Bhadoon* 1993.

Mr. P. D. Goswami, Vakil.

Mr. R. N. Langar, Vakil.

JUDGMENT.

This is a civil reference made by the Subordinate Judge Kathua under section 94 of the Tenancy Regulation. The facts briefly are that the occupancy tenant defendant No. 1 adopted a son defendant No. 2. The plaintiff landlord filed a suit in the court of Wazir Wazarat Kathua for a declaration that after the death of defendant No. 1 the occupancy rights would revert to him and not devolve upon the adoptee defendant No. 2. The Wazir Wazarat finding that it was a declaratory suit held that the suit was not cognizable by a revenue court and returned the plaint to be presented before the proper civil court. The plaint was however presented before the Subordinate Judge of Kathua. The court after going through the plaint came to the conclusion that a civil court is not competent to entertain the suit but the suit is triable by a revenue court. So the Subordinate Judge made this reference.

The sole question for our determination is whether the present suit is excluded from the cognizance of civil court

under section 85 of the Tenancy Regulation. The counsel supporting the reference urged that the relationship between the parties being that of a landlord and an occupancy tenant and the landlord by seeking declaration merely wanted to protect his rights after the death of the occupancy tenant; in other words the object of the remedy sought by the landlord was to challenge the alienation made by the occupancy tenant after his death in favour of the adoptee. Therefore the case is clearly covered by section 85 clause (3) part (g). The counsel for the respondents also was of the same opinion and supported the reference. Section 85 clause (3) part (g) runs as follows:—

"(3) The following suits shall be instituted in, and heard and determined by, Revenue Courts, and no other court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted:—

* * * * * *

(g) suits by a landlord under section 66 to set aside a transfer made of a right of occupancy or to dispossess a person to whom such a transfer has been made, or for both purposes;"

The primary rule in determining whether the case is cognizable by a civil court or a revenue court is to examine the plaint carefully supplemented if necessary by the statement of the plaintiff. If it is clear from the plaint that the relationship between the parties is that of landlord and tenant then it should be further ascertained whether the suit as framed falls under the provisions of section 85 of the Tenancy Regulation. It is not necessary that the plaintiff landlord should directly challenge the alienation of the occupancy rights in order to make the suit cognizable by revenue courts under section 85 clause (3) part (g) of the Tenancy Regulation. If the plaintiff landlord questions the validity of a transfer of a right of occupancy whether the suit is in the form merely declaratory or is to dispossess the transferee the suit clearly falls under section 85 clause (3) part (g) *ibid.* In the present suit the plaint clearly states that the relationship between the parties is that of a landlord and an occupancy tenant and the landlord seeks remedy by way of declaration that his rights after the death of the occupancy tenant should revert to him and should not pass on to the adoptee defendant No. 2 as the occupancy tenant had not obtained the necessary permission at the time of adoption as required by section 68 of the Tenancy

Regulation. Although the suit was declaratory in form the object of the remedy sought was merely to challenge the future alienation by the occupancy tenant in favour of the defendant No. 2. Therefore for the above reasons we have no hesitation in holding that the suit as framed is a revenue suit and our reply to the present reference is that the suit is cognizable by a revenue court. The record shall be returned to the Subordinate Judge Kathua with the instructions that the plaint should be returned to the plaintiff for presentation to the proper revenue court.

---

39 P. L. R., J. & K., 100.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice Janki Nath Wazir.

LALA NANAK CHAND *versus* AHAD BATAKH.

Civil Revision No. 40 of 1993 A.R.R.

Jammu, 27th *Phagan* 1993/10th March 1937.

In suits based on agreements where in the time for the performance of an act is specified, Article 92 and not Article 80 of the Limitation Regulation applies.

Revision against the order of Subordinate Judge, Bhadarwah, dated 15th *Assuj* 1993.

Mr. Amolak Ram, Vakil.

Ahad Batakh in person.

JUDGMENT.

This is an application in revision by the plaintiff whose suit was dismissed by the Subordinate Judge, Badarwah, on the ground of limitation. The plaintiff entered into an agreement with the defendant on 20th *Phagan* 1986 and according to the agreement the defendant has to construct a small house and a chubara for the plaintiff for Rs. 145 and complete the construction by the end of *Jeth* 1987. The plaintiff advanced Rs. 50 to the defendant and obtained a receipt for the same. The defendant failed to construct the house as alleged by the plaintiff and the plaintiff filed a suit for the recovery of Rs. 75 *i. e.* Rs. 50 principal and Rs. 25 as interest. The defenant pleaded that he constructed the house according to the agreement but as the plaintiff failed to supply him with timber he could not complete the house within the specified time. He further pleaded that the suit was barred by limitation. The trial court found that the agreement was not registered therefore article 80 of the Limitation Regulation was applicable and dismissed the plaintiff's suit with costs.

The case for the plaintiff petitioner is that the suit is within limitation on the ground that Article 80 of the Limitation Regulation is not applicable to the agreement and that the agreement is governed by Article 92 of the said regulation. Article 92 runs as follows:—

"For compensation for breach of a promise to do anything at a specified time or upon the happening of a specified contingency".

The terms of the agreement clearly state that the house shall be completed by the defendant by the end of *Jeth* 1987; therefore the time for the performance of the contract is specified in the agreement. The defendant having failed to perform the contract as alleged by the plaintiff within the specified time the cause of action accrued to the plaintiff on the expiry of the specified time and the plaintiff was entitled to file a suit for compensation within six years as provided by Article 92 *ibid*. Article 80 is a general article and is only applicable where there is no special article applicable to certain case but the present agreement falls under Article 92 and therefore Article 80 is not applicable. For these reasons I consider that the suit of the plaintiff is within time and accordingly I accept this revision application, set aside the order of the lower court and remand the case to it for decision on merits. The costs hitherto incurred shall be the costs in the suit.

Revision aceepted.

---

39 P. L. R., J. & K., 101.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

STATE *versus* AMARNATH.

Criminal Acquittal Appeal No. 77 of 1993, and
Criminal Reference No. 55 of 1993.

Jammu, 14th *Poh* 1993/28th December 1936.

The accused was seen breaking open the locks of two shops in the afternoon and was caught red handed committing the offence. He was charged under section 454 of the Ranbir Penal Code but the Magistrate without examining the charge sheet convicted the accused under section 379 of the Ranbir Penal Code.

Held, that, the accused was guilty of an offence under section 454 of Ranbir Penal Code.

Magistrates should carefully examine the record before passing final orders.

Appeal against the order of acquittal of Munsiff Magistrate, First Class, Jammu, dated 6th *Bhadon* 1993.

Government Advocate.

S. Ladha Singh, Advocate.

ORDER.

The accused Amar Nath has been convicted under Section 379 of the Ranbir Penal Code and sentenced to one month's rigorous imprisonment and a fine of Rs. 10. Against this order an appeal has been filed on behalf of the Government with the request that the conviction of the accused should be changed to one under Section 454 of the Ranbir Penal Code and sentence enhanced. The learned Sessions Judge of Jammu has also made a reference to this court for the same purpose. This judgment will govern the decision of the appeal as well as of the reference.

There is no doubt that in the afternoon of the 3rd *Poh* 1990 the accused was seen breaking open the lock of two shops in the town of Jammu. He was actually caught red handed committing the crime by one Dewanchand but at that time the accused managed to get himself released and ran away. After that the accused remained absconding for two years and was arrested in Lahore in 1992. The guilt of the accused is established by the evidence of Diwanchand, Lal Chand and Hansraj. Hansraj first saw the accused with another man Dhani Ram breaking the locks and he raised hue and cry. Upon that the accused was caught by Dewanchand but the accused ran away. The turban of the accused fell on the spot. The witness Lalchand also saw the accused Amarnath running away. This was a clear case under Section 454 of the Ranbir Penal Code and the charge under that very section 454 that is 454 was framed against the accused persons. It appears that subsequently without examining the charge sheet the Magistrate thought that the charge under section 457 of the Ranbir Penal Code has been framed against the accused but the Magistrate thought that as the offence was not committed at night time section 457 was not applicable and he convicted the accused under section 379. The mistake committed by the Magistrate was simply due to the fact that he did not care to examine the charge sheet. The Magistrate will be directed to be careful in future and a separate letter to that effect shall be written to the Magistrate by the Registrar High Court.

From the evidence on the record an offence under Section 454 of the Ranbir Penal Code of which the accused was

originally charged has been proved against the accused person and so we accept this appeal and convert the conviction under section 454 of the Ranbir Penal Code.

In awarding the sentence also the Magistrate seems to have passed the order without keeping the record in view. At the time of passing the sentence the Magistrate did not keep the fact in view that the accused Amar Nath had two previous convictions against him. So in view of the fact that the accused has two previous convictions against him we sentence the accused to six months rigorous imprisonment and a fine Rs. 10. The accused shall be sent to jail to undergo the remaining period of sentence and his bail bond is hereby cancelled.

Appeal accepted.

---

39 P. L R., J. & K., 103.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

NIZAM DIN *versus* STATE.

Criminal Second Appeal No. 122 of 1993.

Jammu, 17th *Baisakh* 1994.

Zaildars and Lambardars are public servants for the purposes of section 353 of the Ranbir Penal Code.

Appeal against the order of Additional Sessions Judge, Jammu, dated 22nd *Poh* 1993.

Mr. Moh'd Yunis, for the Appellant.

JUDGMENT.

The accused was convicted by the Munsiff Magistrate Mirpur under section 353 of the Ranbir Penal Code and sentenced to one year's rigorous imprisonment and a fine of Rs. 15. On appeal the learned Additional Sessions Judge Jammu maintained the conviction but reduced the substantive sentence to that already undergone and also reduced the fine to Rs. 7. The accused has now filed a further appeal in this court.

The case of the prosecution is that on 1st *Phagan* 1992 Hukam Dad zaildar accompanied by two Tehsil peons went to the village of the accused person to collect Government land revenue. On a demand being made by the zaildar the accused and his companions attacked and assaulted the zaildar. The companions of the accused were also convicted but the present appeal has been filed by Nizam Din only.

The first point raised by the appellant's learned counsel is that the zaildar is not a public servant and as such the

accused could not be convicted under section 353 of the Ranbir Penal Code. This contention is not correct. According to the definition of the term public servant as given in clauses (8) and (9) of section 21 of the Ranbir Penal Code zaildars and lambardars, from the nature of their duties, come within the category of public servants. In the present case the zaildar had admittedly gone to the village of the accused for collecting Government land revenue and there can be no question whether Hukam Dad was a public servant and the offence clearly falls under section 353 of the Ranbir Penal Code.

The second objection is that the present accused had lodged a criminal complaint against Hukam Dad and that was the reason why a false case was made against him. On examining the record it appears that the present incident occured on 1st *Phagan* 1992 while the criminal complaint referred to by the counsel of the accused was lodged on 9th *Phagan* 1992. So it is clear that the complaint made by the accused person was made after the incident of assaulting the zaildar had taken place. There is sufficient evidence on the file to show that an assault was made by the accused on Hukam Dad zaildar when he went to the village to collect Government land revenue.

The accused has been rightly convicted and in the nature of the offence the punishment as reduced by the lower appellate court is rather mild. The appeal is dismissed.

Appeal dismissed.

---

39 P. L. R., J. & K., 104.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice, and Mr. Justice K. L. Kichlu.

JAN MOH'D *versus* HAKIM.

Civil Second Appeal No. 41 of 1992.

Jammu, 29th *Poh* 1993/12th January 1937.

In a suit for pre-emption, where the house on the basis of which the claim for pre-emption is made, is the property not of the plaintiff but of his father:

Held, that, the plaintiff cannot succeed.

Appeal against the order of District Judge, Jammu, dated 20th *Maghar* 1992.

Mr. A. R. Oswal, Advocate.
Mr. Dina Nath, Advocate.

JUDGMENT.

On 21st *Magh* 1990 *Mst.* Miran sold her house to Jan Moh'd defendant and in the sale deed the price of the house was mentioned as Rs. 500. On 3rd *Phagan* 1990 the plaintiff instituted a suit for pre-emption in regard to this house on the ground that he was the owner of a contiguous house and that his rights to secure the house sold were superior to those of the defendant. The defendant pleaded that the plaintiff was not the owner of the contiguous house which was the property of the plaintiff's father Allah Ditta and as such had no right to bring the suit in the lifetime of his father. The trial court dismissed the plaintiff's suit but on appeal the learned District Judge decreed the suit on payment of a sum of Rs. 400 by the plaintiff to the defendant as the price of the house. The defendant has now come in second appeal to this court.

We are surprised to read the judgment of the lower appellate court. The plaintiff's father Allah Ditta is alive. On 20th *Chet* 1990 that is after the institution of the suit he filed an application in the trial court in which it was stated that Allah Ditta had relinquished the house in favour of the plaintiff. Allah Ditta definitely stated in the application that he did not want to be included as a party in the suit. According to law in force in this State no relinquishment of any immoveable property can be considered as valid unless the deed of relinquishment was properly registered. In this case there was no such deed which was properly registered. So it is obvious that the plea of relinquishment urged in this case was merely a farce. According to the plaintiff's own witnesses Sukh Dyal, Fazal Ellahi and Nanak Chand it is clear that the house on the basis of which the present claim for pre-emption was made was the property of Allah Ditta and not of his son Hakim. Besides it is significant to note here that only a year before the house in respect of which the right of pre-emption is now claimed was sold there was a litigation between Allah Ditta and *Mst.* Miran and in that litigation Allah Ditta definitely stated the house on the basis of which the claim for pre-emption is made as his own property. So it is clear that the house on the basis of which the present claim for pre-emption has been made is the property of Allah Ditta and not of the plaintiff. In these circumstances the plaintiff

cannot succeed in his claim for pre-emption. We therefore accept this appeal and setting aside the decree of the lower court dismiss the plaintiff's suit with costs throughout.

Appeal accepted.

---

39 P L. R., J. & K., 106.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu and Mr. Justice Janki Nath Wazir.

AHMAD ALI *versus* FATEH MOH'D AND OTHERS.

Civil Second Appeal No. 99 of 1993.

Jammu, 3rd *Poh* 1993.

In joint occupancy tenancy the tenants as between themselves hold their shares independently of each other and on the death of any one of them his share passes to his own heirs under section 67 of the Tenancy Regulation, but as against the landlord they or their heirs taken together constitute a single tenant and as long as any of these persons is in existence the landlord cannot claim the share of him whose line has died out.

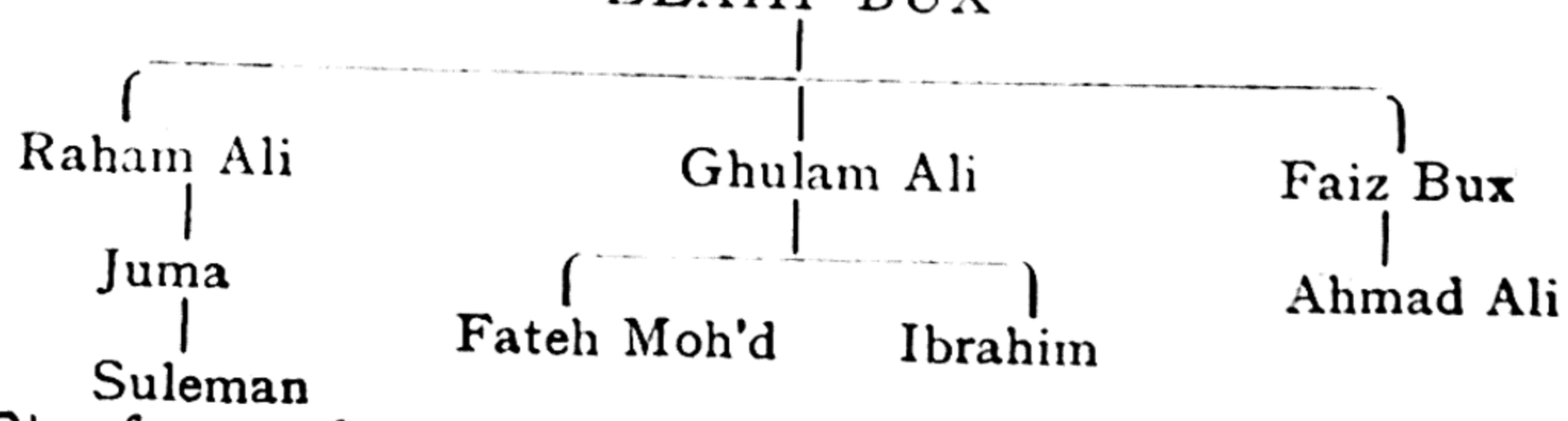
Appeal against the decree of the Additional District Judge, Jammu, dated 11th *Jeth* 1993.

Mr. Ghulam Abbas, Vakil.

Mr. Thakar Das, Advocate.

JUDGMENT.

The following pedigree table will show the relationship of the parties:—



The facts of the case are that Ahmad Ali and Suleman bought occupancy rights in a piece of land belonging to certain individuals. They had occupancy rights in another piece of land owned by the State. Suleman died leaving a widow named Quraishi Bibi. Her name was substituted in the revenue paper for that of her deceased husband. The widow re-married and her rights were extinguished. Fateh and others who are the collaterals of the deceased Suleman filed a suit for the possession of the widow's share of the property. One

of the issues framed by the trial court was "whether the plaintiffs are collaterals of the deceased and whether they are entitled to the share of the deceased co-tenant". The trial court held that the deceased and Ahmad Ali defendant being joint tenants rule of survivorship was applicable and the land passed to the surviving tenant. The plaintiffs suit was however dismissed. The plaintiffs preferred an appeal in the court of the Additional District Judge Jammu. The learned Additional District Judge accepted the appeal on the ground that the principle of survivorship was not applicable as joint tenancy was not proved. The shares of the defendants were specified in the revenue papers and therefore they devolved upon the heirs of the deceased. A decree however for possession was passed in favour of the plaintiffs appellants. The defendant Ahmad Ali has come up in second appeal to this court.

The counsel for the appellant urged that there was joint tenancy and the trial court was right in applying the principle of survivorship and thus in dismissing the suit of the plaintiffs. This argument is fallacious. For the simple reason and according to the well settled principle of law that in joint occupancy tenancy the tenants as between themselves hold their shares independently of each other and on the death of any one of them his share passes to his own heirs under section 67 of the Tenancy Regulation but as against the landlord they or their heirs taken together consititute a single tenant and as long as any of these persons is in existence the landlord cannot claim the share of him whose line has died out. The devolution of the occupancy rights is regulated by section 67 of the Tenancy Regulation and this case falls under the purview of para. (1) clause (c) of this section which runs as follows: "failing such descendants and widows, or, if a female succeeds to the tenancy under clause (b), then when her interest terminates, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives:—

Provided, with respect to clause (c) of this sub-section, in the case of a right of occupancy not held directly from the State, that the common ancestor occupied the land."

It is necessary therefore to distinguish between the occupancy rights in the land owned by certain individuals and the occupancy rights in the land owned by the State. In the land owned by certain individuals the occupancy rights will devolve according to section 67 clause (iii) upon the collaterals; provided the common ancestor was in occupation of the land.

But the common ancestor of the parties had never been in possession of the land, so the collaterals are not entitled to succeed to the rights of the deceased co-tenant in preference to the appellant. If the landlord would have been a party to the suit as no male heir existed and the common ancestor of the collaterals and the deceased was never in possession of the land the rights would have devolved on the appellant as a co-tenant and could not have lapsed to the landlord. But in the present case the landlord not being a party to the suit is quite immaterial. The devolution of occupancy rights is still governed by section 67 *ibid* and the common ancestor of the defendant appellant and of the collaterals not being in possession, the collaterals could not succeed.

It was argued by the counsel for the respondents that as the State had conferred ownership to its occupancy tenants therefore the devolution of rights could not be governed by the Tenancy Regulation but by personal law. This argument does not help the respondents. It has been pointed out by the other side that the marriage of the widow took place long before the rights of ownership were conferred upon the occupancy tenants. Therefore the rights of the widow had terminated long before the ownership had been conferred and the devolution of the rights would be governed by section 67 of the Tenancy Regulation cluase (iii). It is clear from the proviso annexed to clause (iii) that in case the State is a landlord it is not necessary that the common ancestor of the collaterals and the deceased tenants should have been in possession of the land. So the collaterals respondents have a right to succeed if there is no male heir. Therefore the learned Additional District Judge has rightly held that the collaterals are entitled to succeed to the occupancy rights of the land where the State is the landlord. We therefore accept the appeal of the appellant to the extent that he has a right to succeed to the occupancy rights in the land owned by certain individuals in preference to the collaterals while the collaterals are entitled to succeed to the occupancy rights in those lands which were owned previously by the State. The result is that the decree of the learned Additional District Judge as against the appellant must be varied and a decree will be drawn up on the lines indicated in the judgment. The appeal being partly allowed the parties shall bear their own costs in this court.

Appeal partly accepted.

39 P. L. R., J. & K., 109.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

QAMAR AHMAD *versus* RALIA RAM AND OTHERS.

Civil Revision No. 151 of 1993.

Jammu, 16th *Poh* 1993/30th December 1936.

In a suit for specific performance where a specific plea of fraud was put forward by one party, the court ought to go into that plea carefully and find out as to how far that plea was justified.

Revision against the order of District Judge, Jammu, dated 31st *Jeth* 1993.

Mr. Chaman Lal, Advocate.

Mr. Dina Nath, Advocate.

JUDGMENT.

The plaintiff instituted a suit for the specific performance of an agreement said to have been executed in his favour by defendant No. 1 Qamar Ahmad. The plaintiff's claim was that on 12th *Jeth* 1990 defendant No. 1 executed an agreement by which he undertook to transfer in favour of the plaintiff his share in a shop situated in the town of Jammu for a sum of Rs. 280. It was futher alleged that at the time of the writing of the agreement a sum of Rs. 200 was paid to the defendant No. 1 and that Rs. 80 was to be paid at the time of the completion of the sale. Defendant No. 1 did not execute a sale deed of his share in the shop in favour of the plaintiff and so the present suit for specific performance was instituted. Defendant No. *2* Abdul Gani is the step brother of defendant No. 1. The suit was instituted against both the defendants but defendant No. 2 did not appear and *ex parte* proceedings were taken against him. Defendant No. 1 pleaded that at the time of the execution of the agreement dated 12th *Jeth* 1990 he was a minor and that the agreement was in fact executed by his step brother Abdul Gani, that he was illiterate and that his thumb impression on the agreement was fraudulently obtained as he was told that his thumb impression was wanted merely as a witness to the agreement executed by Abdul Gani defendant No. *2*. The trial court decreed the plaintiff's suit and on appeal that decree was upheld by the learned District Judge of Jammu. Defendant No. 1 has now come in revision to this court.

I am surprised to see the judgments of the lower courts in this case. The case appears to have been disposed of by both the courts in a very casual manner and the specific pleading of the defendant appears to have been entirely ignored. In a case where a specific plea of fraud was put forward by one party the court ought to have carefully gone into that plea and found out as to how far that plea was justified.

The plaintiff's claim was that at the time of the writing of the agreement dated 12th *Jeth* 1990 a sum of Rs. 200 was paid to defendant No. 1 Qamar Ahmad, but there is absolutely no evidence on the file to substantiate this plea. The plaintiff produced only one witness Ram Dhan, a step vendor and the evidence of this witness is only in regard to his selling the stamp on which the agreement was executed. This witness was not present at the time of the writing of the agreement and so naturally he could not say anything about the payment of the money to any body. Ibrahim and Gulab Din are cited as marginal witnesses of the agreement but they were not produced by the plaintiff. So there is absolutely no evidence of any kind to show that any payment of money was made to defendant No. 1 at the time of the writing of the agreement dated 12th *Jeth* 1990 as is now alleged by the plaintiff.

When the agreement dated 12th *Jeth* 1990 is carefully examined, the fraudulent nature of the transaction becomes quite clear. The agreement purports to have been executed by both the defendants Abdul Gani and Qamar Ahmad. But as has been mentioned above Abdul Gani is the step brother of Qamar Ahmad. By means of the agreement a bargain was made to secure the share of Qamar Ahmad only in the shop. So when the agreement was only in regard to the share of Qamar Ahmad it has not been explained as to why Qamar Ahmad's step brother Abdul Gani was also included as a contracting party. The agreement has nothing to do whatsoever with Abdul Gani's share in the shop and so it was not necessary to include Abdul Gani as a contracting party. Not only that but in the deed itself Abdul Gani's name has been shown as that of the principal contracting party while the thumb impression of Qamar Ahmad has been affixed only on one side of the document. There is also a note made by Abdul Gani that a sum of Rs. 200 was received by him. There is absolutely no note of any kind in the document that

any payment was made to Qamar Ahmad by the plaintiff. It has been admitted by the plaintiff in his statement dated 18th *Jeth* 1992 that he had already purchased Abdul Gani's share in the shop and that the agreement dated 12th *Jeth* 199) had nothing to do whatsoever with Abdul Gani's share which had already been acquired by the plaintiff. So it is clear that after acquiring Abdul Gani's share in the shop the dodge was to acquire by any means, fair or foul, his step brother Qamar Ahmad's share in the shop also. Qamar Ahmad appeared in the court. He is admitted to be an illiterate boy by the non-applicant's counsel and by appearance he does not seem to be very intelligent. He is young boy and was more than three years smaller in age when the agreement is said to have been executed After examining the record I am convinced that the transaction which is now sought to be enforced was not a ***bona fide*** one and that an attempt was made to acquire the applicant's share in the shop with the help of his step brother Abdul Gani. The transaction is said to have taken place at Jammu and if any payment was actually made to Qamar Ahmad the easiest thing for the plaintiff was to get that payment certified by the Sub-Registrar of Jammu. But no such thing was done.

The plaintiff has not been able to establish that any payment was made to the applicant at the time of the writing of the agreement and so he cannot succeed in his present claim. If any payment was made by him to Abdul Gani the applicant cannot be bound by it.

I therefore accept this application for revision and setting aside the decrees of the lower courts dismiss the plaintiff's suit with costs throughout.

Petition dismissed.

---

39 P. L. R. J. & K., 111.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

MOH'D HUSSIAN ETC. *versus* ILLAM DIN AND ANOTHER.

Civil Second Appeal No. 3 of 1993.

Jammu, 29th *Poh* 1993/12th January 1937.

When a special custom is alleged, it is for the party alleging the custom to prove its existence.

A made a gift of occupancy rights in land to B. No objection was made by anyone to that gift. Subsequently B died childless.

Held, that under section 67 of the Tenancy Regulation the property would go to the heirs of B and not to the collaterals of A.

Appeal against the order of Additional District Judge, Jammu, dated 9th *Jeth* 1993.

Mr. Thakar Dass, Advocate.

Mr. Dina Nath, Advocate.

JUDGMENT.

By virtue of a mutation dated 22nd *Poh* 1955 half of the land which was held by one Shamasdin as an occupancy tenant was transferred in favour of his son-in-law Hussan Din as a gift. The present suit has been brought by the collaterals of Shamas Din against the brothers of Hassan Din for a declaration that the plaintiffs are the owners of the property and not the defendants. Both the lower courts dismissed the plaintiffs' suit. The plaintiffs have now come in second appeal to this court.

The plaintiffs' claim was that the land in dispute was given by Shamas Din to his daughter Labha Bibi and her husband Hussan Din for the benefit of Labha Bibi and her children but as Hussan Din and Labha Bibi died without leaving any children the property would, according to a special custom prevalent among the parties, revert to the collaterals of Shamas Din and would not go to Hussan Din's brothers. It was for the plaintiffs to prove the existence of the special custom which was alleged by them but they have not been able to prove any such custom. The plaintiffs own witnesses Gulab Din and Moh'd Hussain could not give any instance of the existence of the custom alleged by the plaintiffs. The property in dispute consisted of occupancy rights in land and the succession of occupancy rights would be governed by Section 67 of the Tenancy Regulation. The plaintiffs did not challenge the original gift made by Shamas Din in favour of Hussan Din and so that gift was an absolute one. Shamas Din executed the gift deed in favour of Hussan Din on 11th *Chet* 1943 and the mutation of that gift was affected in favour of Hussan Din on 22nd *Poh* 1955. No objection was made by anybody in regard to the attestation of the mutation in favour of Hussan Din. After the attestation of the mutation the property in dispute became the personal estate of Hussan Din. So according to Section 67 of the Tenancy Regulation on Hussan Din's death the property came in possession of his widow *Mst.* Labha Bibi

and after her death the property would go to Hussan Din's heirs *i. e.* the defendants and not to the collaterals of Shamas Din.

In these circumstances the plaintiff's suit has been rightly dismissed. The appeal is dismissed with costs.

Appeal dismissed.

---

39 P. L R, J. & K., 113.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

DESRAJ *versus* MANIRAM AND OTHERS.

Civil Revision No. 3 of 1993.

Jammu, 23rd *Poh* 1993/6th January 1937.

Where every thing possible for the court to secure the service of the applicant was done and he persisted in evading service and deliberately refrained from attending the court.

Held, that, the application for setting aside of the ex parte decree was rightly rejected.

Revision against the order of Additional District Judge, dated 25th *Har* 1993.

Mr. Harbans Bhagat, Advocate.

Mr. Chaman Lal, Advocate.

JUDGMENT.

On 6th *Baisakh* 1987 a suit for the recovery of Rs. 975 was brought against Des Raj and his three brothers in the court of the Munsiff Jammu. Desraj did not appear and so an ex parte decree was passed against him on 15th *Har* 1988. On 28th *Assuj* 1990 the execution of the decree was taken out on 22nd *Har* 1991 that is more than three years after the passing of the ex parte decree Desraj applied for the setting aside of the ex parte decree passed against him. This application was rejected. The defendant then filed an appeal in the court of the District Judge Jammu but the appeal was dismissed. Desraj has now come in revision to this court.

It is clear from the record that everything that was possible for the trial court to secure the service of the applicant was done but the applicant persisted in evading service and deliberately refrained from attending the court. The defendant applicant is employed in a firm in Cawnpore and repeated summonses were sent to his address in Cawnpore butt heapplicant always managed to evade service of these summonses. At first ordinary summonses were sent but they were received back unserved on one excuse or another. Some time

it was stated that the Mohalla in which Desraj lives was not mentioned while at another time it was stated that the applicant had gone out on tour and such like excuses were made. When these ordinary summonses could not be served the trial court sent a registered notice to the applicant. On the envelope of that registered notice it was first reported that the addressee could not be found but subsequently on 5th November 1930 it was reported that the applicant refused to take delivery of the letter. After that a notice in regard to the case was published in a paper published outside the State called Karam Vir. Similarly after the passing of the ex parte decree the executing court also did its best to inform the applicant of the proceedings that were being taken against the applicant. But it was all of no avail. It is also in evidence that the applicant came to Jammu during the pendency of the suit as well as of the execution proceedings and it cannot be believed that all the time the applicant remained totally ignorant of these proceedings. Besides three brothers of the applicant were also involved in the litigation and it cannot be assumed that the applicant was not informed by any of his brothers about the pendency of the suit and the execution proceedings.

In these circumstances it is clear that the applicant deliberately disregarded the process of the court and so his application has been rightly rejected by the lower courts.

The revision application is dismissed with costs.

Application dismissed.

---

39 P. L. R., J. & K., 114.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice Janki Nath Wazir.

MUNSHI SINGH *versus* NARAIN SINGH AND OTHERS

Civil Second Appeal No. 16 of 1993.

Jammu, 4th *Chet* 1993

Possession of one co-sharer is the possession of all the co-sharers and in the absence of an ouster or an overt act amounting to ouster, limitation does not run against the co-sharer who is not in actual possession of his share.

Effecting improvements on the land by co-sharers in possession and the other co-sharers not objecting to these improvements, is not sufficient assertion of hostile title to the knowledge of other co-sharers.

Appeal against the decree of Additional District Judge, Jammu, dated 5th *Bhadon* 1993.

Mr. Gulam Gous, Advocate.

Mr. P. D. Goswami, Advocate.

JUDGMENT.

The plaintiffs applied for partition of the land in dispute to the Revenue authorities in the year 1986. The defendants being in possession of the land set up a title to it. The plaintiffs had to file a suit for possession in a civil court. The suit was accordingly filed against the defendants in the court of City Judge Jammu. The defendants resisted the suit on the ground that the plaintiffs had given up their rights and the defendants were in adverse possession for more than 12 years and their possession had ripened into ownership. They further pleaded that they had incurred enormous expense in effecting improvements on the land in dispute. Various issues were struck by the trial court out of which the following are important:—

(1) Whether the possession of the defendants was adverse to the plaintiffs for more than 12 years.

(2) Whether the defendants effected any improvements on the land and what compensation they were entitled to.

After considering the evidence produced by the parties the trial court found the first issue in favour of the plaintiffs and on the second it found that the defendants had effected improvements on the land in dispute for which they had incurred expenses to the extent Rs. 3609-12. The suit was however decreed in favour of the plaintiffs subject to the payment of the compensation for the improvements on the land which fell to their share. The defendants preferred an appeal to the court of District Judge Jammu which was dismissed. They have come up in second appeal to this court.

It has been argued by the counsel for the defendants appellants that the appellants were in adverse possession of the land for over 12 years and therefore their possession matured into ownership. The plaintiffs had knowledge of the fact that the defendants denied their title. This knowledge was clear from the fact that the defendants effected improvements on the land and the plaintiffs never objected to these improvements. Therefore it could be inferred that the defendants denied their title and the plaintiffs acquiesced to the act of denial on the part of the defendants.

I have carefully gone through the record and I find that there is a concurrent finding of the two courts below that the defendants appellants possession was not adverse to the plaintiffs respondents. The plaintiffs and the defendants are co-sharers in the land. The possession of one co-sharer is the possession of all the co-sharers and in the absence of an ouster or an overt act amounting to ouster limitation does not run against the co-sharer who is not in actual possession of his share. In order to establish his adverse possession the co-sharer in possession must distinctly deny and repudiate the title of the other co-sharers to their knowledge. It is after a lapse of 12 years from the date of the knowledge of the denial and repudiation that the possession of the co-sharer matures into ownership. Mere fact that the defendants effected improvements on the land and the other co-sharers did not object to these improvements, is not sufficient assertion of hostile title to the knowledge of other co-sharers. If the occupant co-sharer does not give any notice of the denial or right of the other co-sharer he must make his possession so visibly hostile and notorious, and so apparently exclusive and adverse, as to justify inference of the knowledge on the part of the persons whom he intends to exclude. In this case there is nothing on the record to show that any hostile title to the knowledge of the respondents was set up by the appellants. In view of these facts I think the learned District Judge has rightly dismissed the appeal and the counsel for the appellants has made out no ground which justifies my interference with the judgment of the learned District Judge. This appeal fails and is dismissed but I make no order as to costs.

Appeal dismissed.

———

39 P. L. R., J. & K., 117.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

BANSI DHAR *versus* FIRM KOTWAL BELIRAM SHANKAR DASS, *Mst.* BHAYAN.

Civil First Appeal No. 20 of 1992.

Jammu, 28th *Poh* 1993/11th January 1937.

Where no specific appropriation was made by the debtor in regard to payments it was open to the creditor under Section 60 of the Contract Act, to appropriate the amount to any debt he liked.

Appeal against the order of Sub Judge, Bhadarwah, dated 1st *Bhadon* 1992.

Mr. Pindi Dass, Vakil.

Mr. Ladha Singh, Advocate.

Mr. Balinder Singh, Vakil.

JUDGMENT.

The plaintiff instituted a suit against the defendant for the recovery of Rs. 4500 on the basis of a pronote dated 2nd *Chet* 1989. Defendant No. 2 Bansi Dhar admitted the execution of the bond but pleaded that he was merely a surety for L. Narayandass to whom the amount mentioned in the bond was actually paid. He also pleaded that as the terms of the original contract were subsequently varied by the contracting parties his responsibility as a surety terminated and he was therefore not liable for the amount claimed by the plaintiff. Defendant No. 1 is the widow of L. Narayandass and she denied all knowledge of the transaction. The trial court passed a decree for Rs. 4500 against both the defendants—against Defendant No. 1 in regard to the estate of L. Narayandass in the possession of the widow and personally against Defendant No. 2. The trial Court declared defendant No. 2 to be an agriculturist and it was directed that if the decree was executed against defendant No. 2 the decretal amount shall be paid by annual instalments of Rs. 100. Against this decree an appeal has been filed by the defendant No. 2 Bansi Dhar. Cross-objections have also been filed on behalf of the plaintiff against the finding of the trial court that the defendant No. 2 is an agriculturist. This judgment will govern the decision of the appeal as well as of the cross-objections.

We will take up the cross-objections first. In regard to this point there is the evidence of the local Patwari and Rasool Malik contractor. Rasool Malik has been held to be a respectable witness by the trial court and according to the evidence of this witness defendant No. 2 cultivates land with his own hands and totally depends upon agriculture for his livelihood. The plaintiff produced no evidence to rebut the evidence produced by defendant No. 2 in regard to this point. So we do not consider it necessary to interfere in the discretion exercised by the trial court in the matter.

As regards the appeal filed by defendant No. 2, two principal objections have been urged on behalf of the appellant. The first is that the appellant became a surety for the pro-note of 2nd *Chet* 1989 in accordance with the agreement dated 26th *Phagan* 1989 and as the terms of the agreement were subsequently varied by the contracting parties his responsibility as a surety ceased. This contention is not tenable. The present suit is based entirely on the pronote dated 2nd *Chet* 1989. In that pronote no mention whatsoever has been made of the agreement dated 26th *Phagan* 1989 said to have been executed between the plaintiff and Narayandass. The pro-note on which the suit is based was executed by Narayan Dass as well as by the present appellant Bansi Dhar and both the executants of the pronote were equally liable for the payment of the amount mentioned in the pro-note. The present suit has nothing to do with the other transactions which might have been entered into between the plaintiff and late L. Narayandass but the suit is based entirely on the pronote dated 2nd *Chet* 1989, and according to the terms of the pronote the present appellant is liable for the amount mentioned in the pronote in his capacity of one of the executants of the pronote. The other point is that on 26th *Maghar* 1990 a sum of Rs. 1500 was paid by Narayan Dass to the plaintiff and similarly on 21st *Magh* 1990 a further sum of Rs. 2000 was paid by Narayan Dass to the plaintiff but that both these payments amounting to Rs. 3500 have not been credited by the plaintiff towards the pronote dated 2nd *Chet* 1989. The payments of Rs. 3500 are admitted by the plaintiff but it is stated that these payments were made by Narayan Dass in regard to a totally separate account and had nothing to do whatsoever with the pronote dated 2nd *Chet* 1989. It is admitted on behalf of the appellant

that other moneys were also due from Narayan Dass to the plaintiff. According to Section 60 of the Contract Act if no specific appropriation was made by the debtor in regard to the payments made by him it was open to the creditor to appropriate the amount to any debt he liked. It is not alleged that the payments of Rs. 3500 were specifically appropriated towards the debt covered by the pronote dated 2nd *Chet* 1989. If these payments were made towards the debt covered by the pronote the easiest thing for Narayan Dass was to get these payments recorded at the back of the pronote. But no such thing was done. So as no specific appropriation was made by the debtor in regard to the payment of Rs. 3500 the creditor could appropriate these payments in respect of any debt which was due from the debtor to the creditor.

It is also urged that the yearly instalments of Rs. 100 are excessive. We have considered this point and we see no reason to interfere in the discretion exercised by the trial court in the matter In the result both the appeal and the cross-objections are dismissed with costs.

Appeal dismissed.

---

39 P. L. R. J. & K., 119.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice Janki Nath Wazir.

PALU RAM *versus* FIRM HIRU SHAH-KANSHI RAM.

Civil Revision No. 182 of 1993 A. R. R.

Jammu, 16th *Magh* 1993.

Burden of proving the passing of the consideration is very heavy under A R.R. upon the person basing his claim on a bahi entry, yet in face of the finding against the executant in a previous litigation between the parties the burden is shifted to the executant to show that he received no consideration.

2. A literate agriculturist well versed in business is not entitled to the same latitude as given to an illiterate agriculturist under A. R. R.

Revision against the decree of Additional District Judge, Jammu, dated 1st *Jeth* 1993.

Mr. Chaman Lal, Advocate.

Messrs. A. R. Oswal, Advocate and *Kishori Lal, Vakil.*

JUDGMENT.

Bhagat Ram and Jagat Ram are two brothers and they with their uncle Palu Ram carried on business mostly in timber and

grain dealing. In 1983 there was a disruption between the uncle and his nephews and Palu Ram the uncle separated from his nephews. A partition deed was executed on 18th *Maghar* 1983 which was registered. According to this deed a sum of Rs. 2317 was made payable by Palu Ram to Jagat Ram and Bhagat Ram. On 21st *Maghar* 1985 Bhagat Ram and Jagat Ram executed a Nawan for Rs. 4364 in favour of the firm Hiru Shah Kanshi Ram and Palu Ram also executed a Nawan for Rs. 1923 in favour of the same firm. On 23rd Katik 1986 bonds for the sums found due at the time were executed by Palu Ram as well as by Bhagat Ram and Jagat Ram for their respective debts and they agreed to pay it off by certain instalments which were fixed at that time. In 1989 as the Agriculturists Relief Regulation was in existence the bonds executed by Palu Ram and his nephews gave rise to litigation. A suit for accounts was instituted by Palu Ram on 15th *Jeth* 1989 under the Agriculturists Relief Regulation. On the other hand a suit was filed by the firm Hiru Shah Kanshi Ram also, against Palu Ram on 4th *Sawan* 1989 for one instalment which had fallen due on the bond of 23rd *Katik* 1986. In the suit filed by Hiru Shah Kanshi Ram against Palu Ram in the court of Subordinate Judge Kathua a decree was passed in favour of the plaintiff firm and the defendant did not file any appeal against that judgment. But in the suit filed by Palu Ram against the firm Hiru Shah-Kanshi Ram for accounts the trial court held that the amount which was due from the plaintiff to the defendant firm was a cash transaction and no account was opened between the parties. A decree was accordingly passed in favour of the defendant firm for Rs. 2101-8 against the plaintiff Palu Ram to be paid by instalments of Rs. 100 per harvest and allowed 12 per cent. as future interest on the amount decreed. The plaintiff Palu Ram preferred an appeal to the court of the District Judge Jammu which was rejected only with this modification that future interest was reduced to 6 per cent. The plaintiff appellant has come up in revision to this court.

The counsel for the petitioner argued before me that the bond executed by the plaintiff in favour of the defendant respondent firm on 23rd *Katik* 1986 which was the basis of the suit was executed for the balance found due on some previous account. He attacked the findings of the two courts below based upon the evidence of two witnesses Bhagat Ram and Chuni Lal. His argument was that Bhagat Ram and Chuni

Lal were the residents of the same place where the defendants live and therefore they were interested witnesses. He further urged that there were letters which are on the file to show that there was previous transaction between the plaintiff and the defendant firm. It was incumbent upon the defendant firm to prove the passing of the consideration of the amount for which the bond was executed by the plaintiff. Lastly he urged that the findings in the case filed by the defendant firm against the plaintiff could not be ***res judicata*** in the present case as the court which tried the first case was a court of ordinary jurisdiction while the present case has been tried by a court having special jurisdiction. The counsel for the respondent in reply has argued that the trial court after going through the evidence produced by the defendant firm has come to the conclusion that the amount for which the bond was executed was paid in cash. The court has believed the two witnesses produced by the defendant firm and has disbelieved the evidence of Bhagat Ram the plaintiff's witness. This finding was not disturbed by the lower appellate court and in revision the concurrent finding could not be disturbed. The letters which have been referred to by the counsel for the petitioner could not establish the previous transaction between the parties. It appears from the letters that Jagat Ram and Bhagat Ram when Palu Ram was their partner received some money *i. e.* Rs. 700 and at another time Rs. 200 from the defendant firm. These letters do not necessarily show that there was a debt due from Bhagat Ram and Jagat Ram to the defendant firm and both the courts are of opinion that no previous transaction has been proved. It has been further urged that the finding in the previous litigation is ***res judicata*** in the present case and the counsel has relied upon the following authorities; *1935 Madras 835* and *1935 Lahore 826*. I agree with the learned counsel that the principle of ***res judicata*** does apply to the present case. Even if it is considered for moment that the principle of ***res judicata*** does not apply yet there is a finding in the previous litigation that the transaction was a cash transaction between the parties and the finding creates a duty on the party against whom the finding is given to displace it *1936 Cal. 629*. Although the burden of proving the consideration is very heavy under the Agriculturists Relief Regulation upon the defendant firm yet in face of that finding in the previous litigation the burden is shifted to the plaintiff

No. 1 was not willing to get the sale deed registered but has given no finding upon the latter part of the issue "whether the plaintiff has got the right to sue."

The trial court relied upon the evidence of Sarnu and Faqiru the plaintiff's witnesses who stated that the defendant No. 2 asked the defendant No. 1 to get the sale deed registered but the defendant No. 1 was reluctant to do so. No doubt Sarnu is an interested witness as he owed some money to the defendant No. 1. But Faqiru is an independant witness and from his statement it appears that the defendant No. 2 did ask the defendant No. 1 to get the sale deed registered. The defendant No. 2 was in possession of the sale deed and in the sale deed it is stated that the defendant No. 2 could get it registered even of his own accord. Under the Registration Regulation the executant or the transferee both have the right to get the deed registered. The counsel for the respondent has urged in reply that under section 60 of the Tenancy Regulation it was necessary for the defendant No. 1 to get the permission of the Revenue authorities before he could transfer his occupancy rights. The defendant No. 1 had applied to the Wazir Wazarat for the grant of permission but the application was consigned to the record room in default of prosecution, by the said Wazir Wazarat. The counsel has drawn my attention to a circular No. 66 dated 3rd August 1934 according to which instructions were issued to the Sub Registrars not to register a deed unless it was complete in all respects and the counsel has argued that the defendant No. 2 could not produce the sale deed which was in his possession for registration because the registration would have been refused by the Sub Registrar. The defendant No. 2 finding that the defendant No. 1 was reluctant to transfer the land and to get the sale deed registered transferred his rights accrued to him against the defendant No. 1, to Vishwanath plaintiff who served a notice one year after the date of the sale deed upon the defendant No. 1 and notwithstanding the notice the defendant No. 1 did not execute a fresh sale deed and get it registered nor did he return the price received from the defendant No. 2 No doubt from the evidence of Faqiru the plaintiff's witness it appears that the defendant No. 2 asked the defendant No. 1 to get the sale deed registered and hand over the possession. But the defendant No. 2 was quite competent to present the sale deed before the Sub Registrar for registration. If the

Sub Registrar had refused the registration as required by the above mentioned circular the defendant No. 2 had two remedies open to him *i. e.* to sue for the specific performance of the contract or to treat the contract breached by the defendant No. 1 and sue for damages for the breach. But the defendant No. 2 has chosen a remedy which is not warranted by law. He has transferred his rights to sue for the recovery of the price to the plaintiff. Section 6 of the Transfer of Property Regulation is very clear and a right to sue for the recovery of damages cannot be transferred. Therefore the finding on the latter part of the issue would be that the plaintiff is not entitled to sue for the recovery of the price.

In view of these observations I accept this petition, set aside the decree of the trial court and dismiss the suit of the plaintiff. In the special circumstances of this case I make no order as to costs.

Petition accepted.

---

39 P. L. R., J. & K., 125.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu.

GAMOON AND OTHERS *versus* DEVI DAS.

Civil Second Appeal No. 103 of 1993.

Jammu, 11th *Magh* 1993.

Unauthorized transfer by authorised guardians can be impeached by minors.

Appeal against the order of Additional District Judge, Jammu, dated 10th *Jeth* 1993.

Mr. Madhusudhan.

Mr. Lok Nath Sharma.

JUDGMENT.

The plaintiffs appellants brought a suit for possession of 1 kanal and 19 marlas of land situated in Mouza Gangwan, Tehsil Jammu, which they allege had forcibly been taken possession of by the defendant some years back. The defendant's plea was that the plaintiffs' mother, *Mst.* Massan during the formers' minority by an exchange deed dated 29th *Jeth* 1980 exchanged the plot of land in dispute with plot of land belonging to the defendant in Mouza Shazadpur and that he had all along been in possession of the same. The trial court of Munsiff Jammu held that the plaintiffs mother was not competent to alienate the minors' property without any legal necessity and decreed the suit. On appeal however the learned

Additional District Judge of Jammu reversed the decree of the trial court and dismissed the plaintiffs' suit. It was held by the learned Judge that the plaintiffs' suit was barred by limitation and that the mother was competent to alienate the property of her minor sons. This is a second appeal against that order by the plaintiffs.

It has been urged by the learned counsel for the appellants that the lower appellate court was not right in holding that the suit was barred by limitation and in applying Article 54 of the Limitation Regulation to the present suit. His contention is that the plaintiffs' mother during the minority of her sons was not competent to alienate their property without legal necessity and that such necessity has not at all been proved by the defendant. There is a good deal of force in these contentions. Out of the plaintiffs appellants at least two of them *viz.* Munshi and Baisakhi are admittedly minors even now. The present suit is for possession and not one by award for setting aside the transfer of property made by his guardian, and Article 54 of the Limitation Regulation is clearly not applicable. Article 141 of the Limitation Regulation applies to the present suit and the suit which was instituted within 12 years of dispossession was within time and the finding of the lower appellate court in this respect is not correct.

The contention of the learned counsel for the defendant is that it is not necessary in cases of transfers by natural guardians of minors to prove legal necessity and that in this case the time began to run from the date the eldest brother attained his majority. These contentions however are devoid of all force. The ruling of the Lahore High Court reported as *1925 Lahore 619* (2) cited by him does not support his contention. In that ruling also it has been held that if the sale is made by a natural guardian who goes beyond the scope of his authority the transaction cannot be regarded as a nullity and will bind the minor unless he succeeds in impeaching it within the period prescribed by law. This also shows that unauthorized transfers by authorized guardians can be impeached by minors. The defendant has failed to prove that there was any legal necessity for the exchange of the land in dispute and that the same was for the benefit of the minors. The transfer is accordingly not binding on the minors.

Although the defendant has been in possession of the plot in dispute according to the Patwari, the land revenue payable

for the same is being paid by the plaintiffs and the entries in the Revenue Records are still in their names. On the other hand, the plot of land in Shazadpur which is stated to have been given in exchange to the plaintiffs is still in the possession of the defendant. This leaves no room for doubt that the alleged exchange was certainly not for the benefit of the minors and as a matter of fact was not acted upon. The trial court had rightly decreed the plaintiffs' suit. I accordingly accept the appeal, set aside the decree of the lower appellate court and restore that of the trial court. The defendant shall pay the plaintiffs' costs throughout.

Appeal accepted.

---

39 P L. R. J. & K., 127.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

GANGA RAM *versus* CHANDAR PRAKASH.

Civil Revision No. 45 of 1993.

Jammu, 10th March 1937.

When any property is ordered to be sold by public auction in execution of a decree, the mandatory provisions of law as contained in Order 21 Rule 66 of the Code of Civil Procedure should be strictly complied with by the executing court. A proclamation of the intended sale giving time and place of the sale and specifying all the necessary particulars in regard to the property must issue and notice of the sale must be given both to the decree-holder and the judgment-debtor. Failure to comply with these provisions amounts to material irregularity. Substantial injury must be deemed to have been caused to the judgment-debtor if his property is sold on inadequate price.

Revision against the order of Additional District Judge, Jammu, dated 17th *Poh* 1993.

Mr. Ladhasingh, Advocate.

Mr. Pindi Dass.

JUDGMENT.

On 21st *Poh* 1990 an ex parte decree for Rs. 612 was passed in favour of Chandar Prakash son Lala Dewan Chand Vakil of Mirpur. In the execution proceedings a portion of the house belonging to the judgment-debtor was auctioned and was purchased by the decree-holder himself for a sum of

Rs. 325. Against this the judgment debtor applied to the executing court under Order 21 Rule 90 of the Code of Civil Procedure to have the sale set aside on account of material irregularity. This application was rejected. The judgment debtor then appealed to the District Court but the appeal was dismissed. The judgment-debtor has now filed a further appeal in this court.

On an objection being raised by the other party Mr. Ladha Singh admitted that the appeal was not competent and therefore requested that the appeal must be treated as an application for revision. So this application has been heard as a revision application.

The first point urged by Mr. Ladhasingh is that the sale effected in this case was absolutely illegal as it was in contravention of the mandatory provision of law as contained in Order 21 Rule 66 of the Code of Civil Procedure. Rule 66 provides that where any property is ordered to be sold by public auction in execution of a decree the court shall cause a proclamation of the intended sale to be made in the language of such court and secondly that such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state time and place of sale, and specify the other particulars in regard to the property. It is urged that in the present case no proclamation was issued in regard to the sale of the property and also that no notice of any kind was given to the judgment-debtor in regard to the proposed sale. It is admitted by the non-applicant's counsel that no proclamation was issued and that no notice was served upon the judgment-debtor. The lower appellate court also admitted that this irregularity took place in the present case but declined to interfere as in its opinion no substantial injury was caused to the judgment-debtor. After examining the record, we think that in the present case substantial injury has been caused to the judgment-debtor. On 1st *Sawan* 1990 an application was made by the plaintiff for the attachment of the property before judgment, and along with that application a statement was annexed. In that statement the approximate value of the property was shown as Rs. 2,000. Later on during the execution proceedings a second statement was filed by the plaintiff and in that statement the value of the property was shown as Rs. 750 as against Rs. 2,000 shown in the first statement. On 26th *Katik* 1992 the plaintiff filed an application to the effect that only a part of the house and not

the whole house be put to auction and this request was accepted by the executing court. It is stated that the portion which was desired to be sold was the one which was immediately adjacent to Lala Dewan Chand's house. The property was subsequently auctioned in favour of the plaintiff on 30th *Har* 1993 for a sum of Rs. 325 only. It appears that the plaintiff has been making different statements in regard to the value of the property and that the object of the plaintiff decree-holder was simply to acquire the property himself on as little price as possible. No reason has been shown as to why the value of the property was reduced from Rs. 2,000 to Rs. 750 within a short period and why the property could not fetch more than Rs. 325 which was offered by the plaintiff himself on 30th *Har* 1993. We think that the proceedings in the case have been conducted in a very unsatisfactory manner and that great irregularity has been committed by ignoring the mandatory provisions of Order 21 Rule 66 of the Code of Civil Procedure. We also think that the price offered by the plaintiff is not adequate and that substanial injury has been done to the judgment-debtor by the irregular manner in which proceedings have taken place. We therefore accept this revision application and setting aside the order of the lower courts direct that a fresh sale shall take place of the property in strict conformity with the provisions of law. No order as to costs in this court.

It has been represented by Mr. Ladhasingh that although nominally the decree-holder is Chandar Prakash the real decree holder is Lala Dewan Chand Vakil himself. It is said that Lala Dewan Chand Vakil has himself been doing money lending business and that he uses his son's name in all these transactions as being a legal practitioner he is debarred from openly indulging in money lending business. In this connection Mr. Ladhasingh invited our attention to page 4 of the trial court's file. On that page there is a draft of a plaint on a stamp paper drawn up in the name of Lala Dewan Chand for the recovery of money on the basis of a bond. The plaint was subsequently crossed out and was utilized for some other purpose. This plaint was drawn up on 32nd *Har* 1990 and has been referred to by Mr. Ladhasingh to show that even now Lala Dewan Chand Vakil carries on money lending business. Mr. Ladhasingh referred us to some previous orders of the High Court and also to the warnings administered to

Lala Dewan Chand Vakil in the past and then it was stated that inspite of all these warnings Lala Dewan Chand Vakil carried on money lending business. In this connection a notice shall issue to Lala Dewan Chand Vakil to show cause why action against him should not be taken under the Legal Practitioners Regulation.

Petition accepted.

---

39 P. L. R., J. & K., 130.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice and Mr. Justice Janki Nath Wazir.

NIKA *versus* STATE.

Criminal First Appeal No. 8 of 1993.

Jammu, 14th *Poh* 1993.

Where the only eye witness in the case was the wife of the deceased who did not report the occurrence to any body for six days and her conduct towards the accused was such that she went afterwards to live with the accused.

Held, that, in view of a very strange conduct of the woman, it is not safe to rely upon her evidence and in the absence of sufficient corroboration, the accused is entitled to the benefit of doubts.

Appeal against the order of Additional Sessions Judge, Jammu, dated 30th *Katik* 1993.

ORDER.

The accused Nika has been convicted by the Additional Sessions Judge Jammu under Section 302 of the Ranbir Penal Code and sentenced to life imprisonment subject to confirmation of the sentence. This is an appeal against that conviction and sentence.

The prosecution story is that on 10th *Sawan* 1993 there was an altercation between the accused Nika and his brother Jamad Ali in regard to the division of sheep between the two brothers and that during that altercation the accused hurled stones at his brother Jamad ali and that Jamad Ali died of the injuries the same night. It is stated that at first the two brothers lived jointly but that in *Baisakh* 1993 they had separated. Nika lived at a place called Girkhoi while at the time of occurrence Jamad Ali lived at a place called Choian in Dhar Sar-Kanth in Tehsil Reasi. In the morning of 9th *Sawan* 1993 Nika came to his brother's house at Choian and stayed for the day and night at his brother's house. It is alleged

that at the evening of 9th *Sawan* Nika demanded his share of the sheep from his brother but Jamad Ali stated that all the sheep which were with him were his exclusive property and that Nika was not entitled to get any of these sheep. Nothing happened that evening and the two brothers slept in the same room. On the next morning that is 10th *Sawan* 1993 Nika repeated his demand about the sheep and then the quarrel started.

The only eyewitness in the case is ***Mst.*** Bhuri, widow of Jamad Ali deceased and in view of the manner in which this woman behaved in connection with this case it does not appear to us to be safe to base any conviction on the mere statement of this woman. This woman states that she saw the accused hitting her husband with a stone and the husband falling down but she did not report the occurrence to any body for six days. Soon after the occurrence two persons Halim and Mir Wali came to the spot. Of these two persons Mir Wali is real brother of ***Mst.*** Bhuri. ***Mst.*** Bhuri did not inform her own brother Mir Wali that the injuries inflicted on Jamad Ali were caused by Nika accused. It is possible that ***Mst.*** Bhuri was afraid of Nika in the very beginning but no reason has been shown as to why she did not inform her own brother Mir Wali about the occurrence when he reached the spot immadiately after. Now while Halim and Mir Wali were still on the spot, two more persons Shah Wali and Mah Wali came to the spot. Of these two persons Mah Wali is also a real brother of ***Mst.*** Bhuri. ***Mst.*** Bhuri admits in her statement that when all these four persons were on the spot Nika told them that Jamad Ali had received injuries from a fall but ***Mst.*** Bhuri did nothing to contradict the statement of Nika in the presence of these four persons. If Jamad Ali had actually been struck and injured by Nika it was the duty of ***Mst.*** Bhuri to tell her two brothers Mir Wali and Mah Wali and two other persons who had collected there that Nika was telling them a lie and that injuries were in fact caused by Nika himself. But no such thing was done by ***Mst.*** Bhuri. Jamad Ali was then removed to Nika's house at Girkhoi with the help of the four persons named above and there Jamad Ali died the same night. Halim has stated that on the third day of the occurrence he went to see ***Mst.*** Bhuri and informed her of the death of her husband but even at that time that is on the third day of the occurrence ***Mst.*** Bhuri did not tell Halim that Jamad Ali was killed by his brother Nikka.

Mst. Bhuri has also admitted in her statement that there were other houses on the Dhar in front of her own house and that if anybody shouted from her house that shout would be heard in the other houses. Even after Jamad Ali had been taken away by Nika to his own house and Nika was not present in *Mst.* Bhuri's house, *Mst.* Bhuri made absolutely no attempt either to go to the other houses on the Dhar and inform the occupants of those houses that a murder had been committed by Nika. Not only that she did not go to those houses but she did not make any sort of noise or hue and cry to inform the occupants of the other houses that any foul play had been committed in her house. After the body of Jamad Ali had been burried at Girkhoi Nika came to *Mst.* Bhuri's house and asked her to go with him to his own house and live there. *Mst.* Bhuri readily agreed to go with Nika to his own house and live there. This conduct on the part of *Mst.* Bhuri is also very strange. If she knew that Nika was the murderer of Jamad Ali, her husband, she should not have gone to live at Nika's house. On the other hand it was the duty of *Mst.* Bhuri to inform her brothers and everybody else of the crime which had been committed by Nika. On the sixth day of the occurrence it is stated that Duda, a brother of *Mst.* Bhuri, came to see her and it was to Duda that *Mst.* Bhuri made disclosure for the first time that the injuries on the head of Jamad Ali were caused by Nika. Afterwards a report was made to the Police station at Ramban and the investigation of the case started. The body of Jamad Ali was taken out from the grave and sent for post mortem examination. It is curious also that in the statement the medical officer who conducted the postmortem examination stated that the injuries found on the body were post mortem. The statement of Dr. Sameshwar Datt Sub Assistant Surgeon in charge of the Banihal dispensary was recorded in the court of the Committing Magistrate and the same statement was transferred to the sessions file. The learned Additional Sessions Judge who tried the case did not send for the Doctor and examine him again as to whether the statement made by him that the injuries found on the body were post mortem was deliberate or was due to lapse.

We do not think that in view of very strange conduct of the woman *Mst.* Bhuri, her evidence can be safely relied upon, and a sufficient corroboration of *Mst.* Bhuri's statement is

not forthcoming. In any case the case is not free from doubt and we think that the accused is entitled to the benefit of doubt.

We therefore accept this appeal and setting aside the conviction acquit Nika accused. He shall be released forthwith. A copy of this order shall be immediately sent to the Superintendent Jail Jammu.

Appeal accepted.

---

39 P. L. R., J. & K., 133.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

BASU SHAH *versus* KANSHI RAM.

Civil Revision No 70 of 1993.

Jammu, 17th *Baisakh* 1994.

When a defendant cannot be found, service made on his brother who lives with him in the same house will be considered as proper service on the defendant according to the provisions of Order 5, rule 15 of the Civil Procedure Code.

Revision against the order of Additional District Judge, Jammu, dated 15th *Poh* 1993.

Mr. Thakar Dass.

Mr. Rup Chand Nanda for *Mr. Prem Dass.*

JUDGMENT.

A suit for the recovery of Rs. 1800 was filed against three brothers Basu Shah, Brij Lal and Kishan Chand. Brij Lal and Kishen Chand contested the suit but Basu Shah did not appear. On 30th *Poh* 1992 a decree for Rs. 1200 was passed against the defendants against Kishen Chand and Brij Lal defendants the decree was on merits while it was ex parte against Basu Shah who did not appear. On 28th *Magh* 1992 Basu Shah applied for the setting aside of the ex parte decree passed against him but the application was dismissed. He then filed an appeal in the court of the District Judge Jammu but the appeal was also dismissed. He has now filed a revision application in this court.

There is no substance in this revision application. It is clear from the record that the non-appearance of the applicant in the trial court was deliberate. The applicant was personally served in regard to the case on 6th *Jeth* 1992 but he never appeared in the court. The applicant made an endorsement on the back of the summons that he was suffering from gout and that some other date might be fixed. So 31st

Jeth 1992 was fixed the next date for the hearing of the case and for that date a fresh notice was sent to the defendant-applicant. On that notice there was a report of the process server that the defendant had gone to Amritsar but that the duplicate copy of the notice had been handed over to the defendant's brother.

An attempt has now been made to show that the applicant's brother to whom the notice was handed over does not live jointly with the applicant but lives separately. But this contention is not correct and is negatived by the evidence of the applicant's own witness Devi Ditta. Devi Ditta clearly stated that the applicant and his two brothers lived jointly and that all their business was also joint. So when the notice for 31st *Jeth* 1992 was handed over to the applicant's brother who jointly lived with him, service on the defendant shall be deemed to have been made in accordance with Order 5, rule 15 of the Code of Civil Procedure. In the first place the applicant was served personally and he never cared to attend the court or to take any interest in the case. On the second time service was effected on the defendant through his brother who lived with him. It is now submitted that the applicant was ill at the time when the case was going on in the trial court and that was the reason why he did not appear. But even if he was ill there was nothing to prevent him to appoint somebody as his agent or *mukhtar* for the purposes of the litigation. It is clear from the evidence of Devi Ditta witness that all matters relating to courts are attended to by the applicant's brother Brij Lal on behalf of all the three brothers. Even in this case the applicant could easily depute Brij Lal or his other brother Kishen Chand to represent the case. From all the circumstances I am convinced that the absence of the applicant in the trial court was deliberate.

The decree which was passed against the applicant and his brothers was challenged by his brothers in appeal but they were not successful in that appeal. The object of this application seems to be simply to further prolong the proceedings but this cannot be allowed. The revision application is dismissed with costs.

Application dismissed.

———

39 P L. R. J. & K., 135.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

RIKHIA *versus* STATE.

Criminal Revision No. 11 of 1993.

Jammu, 15th *Poh* 1993/29th December 1936.

When there is the evidence of a respectable witness that the accused worked as a servant and cultivated his land, it could not be said that the accused was without ostensible means of subsistance and as such action under section 109 (b) of the Code of Criminal Procedure could not be taken against the accused person.

Revision against the order of Additional Sessions Judge, Jammu, dated 19th *Katik* 1993.

Applicant in person.

Government Advocate.

JUDGMENT.

The applicant has been bound down for one year under Section 109 of the Criminal Procedure Code by the Sub-Divisional Magistrate Reasi. Against this order an appeal was first filed in the Sessions court but the appeal was dismissed. The applicant has now come in revision to this court.

The learned Government Advocate frankly admitted at the outset that this was not a case in which action under Section 109 of the Criminal Procedure Code could he taken against the accused applicant. The lower courts have based their order on clause (b) of section 109 of the Code of Criminal Procedure thinking that the accused has no ostensible means of subsistance and cannot give a satisfactory account of himself. As regards the ostensible means of subsistance there is clear evidence of Thakar Sansarsingh Zaildar who stated that the accused lived in his house as his servant and cultivated his land. This clearly affords the means of subsistance and it cannot be said that the accused was without ostensible means of subsistance. As regards the point that the accused could not give a satisfactory account of himself the lower courts seem to have been impressed against the accused by the fact that he could not give the name of his own father. But it is clear from the record that the accused was born as an illegitimate child and was therefore abandoned by his mother and was brought up by Thakar Rachpalsingh. In these circumstances there was nothing

strange if the accused stated himself to be merely a *palak* of Rachpal Singh and could not give the name of his natural father.

In these circumstances the accused person cannot be rightly bound down under Section 109 of the Criminal Procedure Code and the order of the lower courts so binding him down for good behaviour cannot be maintained. I therefore accept this application for revision and set aside the order of the lower courts binding down the accused applicant under Section 109 of the Code of Criminal Procedure.

Appeal accepted.

---

39 P. L. R., J. & K., 136.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice, and Mr. Justice K. L. Kichlu.

KISHAN CHAND AND OTHERS *versus* MELA RAM AND OTHERS.

Civil First Appeal No. 12 of 1993.

Jammu, 27th *Magh* 1993/8th February 1937.

In the execution of two decrees certain immovable property was attached. The judgment-debtor's children and wife objected to the attachment on the ground that the property was ancestral and could not therefore be attached and sold in execution of persanal decrees against the judgment debtor. It was found that property attached was not ancestral but was self-acquired property of the judgment-debtor held that in fact of this clear finding that the property was self-acquired property of the judgment-debtor, the judgment-debtor's children and wife had no locus standi to object to the attachment of the property.

Appeal against the order of City Judge, Jammu, dated 20th *Assuj* 1993.

Mr. Harbans Bhagat, for Appellants.

Mr. Mathra Das, for Respondent No. 1.

Respondent No 2 in person.

JUDGMENT.

In the execution of two decrees passed against one Chet Ram, two shops situated in the town of Jammu were attached. Upon that, the children and the wife of Chet Ram objected to the attachment on the ground that the property was ancestral and had come to their specific share by virtue of a special partition and that the property could not be

attached in the execution of any decree passed against Chet Ram. The objection was rejected. Then the children and the wife of Chet Ram instituted the present suit for a declara- that the property was ancestral and could not therefore be attached in the execution of any personal decree against Chet Ram. The suit was dismissed. The plaintiffs have now come in appeal to this court.

The first point urged by the appellants' learned counsel is that the shops in question are not the self-acquired property of Chet Ram but are ancestral as they were built by Chet Ram with the money left by his father, Nihal Chand. We have examined the record but we do not think that this contention of the learned counsel has been established by means of any satisfactory evidence on the other hand, this contention is completely negatived by Chet Ram's own admissions and his conduct in regard to these shops from time to time. In the first place, Chet Ram's dealings with the property throughout have been of such a nature as to show that Chet Ram always treated it as his own personal property and that nobody else had anything to do with that property. First of all the shops were mortgaged with Dr. Shiv Das and in that transaction Chet Ram was shown as the absolute owner of the property. Subsequently in *Magh* 1980, Chet Ram wanted to sell these shops to one *Jotshi* Anant Ram for a sum of Rs. 2,300 and in connection with that proposed sale a draft sale deed was executed on 13th *Magh* 1980. In that draft deed too Chet Ram was shown as the absolute owner of the property and it was specifically mentioned that nobody else had any right or share in that property. This draft is on page 62 of the trial Court's file. Afterwards in Chet 1980, Chet Ram wanted to make some sort of provision for his family members as he was afraid that otherwise the whole of his property might be secured by his creditors. So on 15th *Chet* 1980 he executed a document in favour of his children and his wife and undertook to make some sort of provision for their future maintenance. This document is on page 65 of the trial court's file. In this document it is clearly admitted by Chet Ram that the shops which were mortgaged with Dr. Shiv Das were constructed by Chet Ram with his own personal income. Then a portion of the shops was subsequently obtained by the Government for widening the road and a sum of Rs. 11,000 odd was paid to Chet Ram as compensation of the portion acquired. It is

admitted by Chet Ram that this money which was given to him as compensation by the Government was paid to some of his creditors in liquidation of his personal debts. Apart from the admissions of Chet Ram, there is also a very significant admission of Chet Ram's mother on the file in regard to this matter. In her statement dated 26th *Katik* 1976 Chet Ram's mother *Mst.* Mathra Devi clearly admitted that the shops which were constructed by her son Chet Ram were constructed by Chet Ram with his own money and that no money for that purpose was left by her deceased husband, Nihal Chand. In these circumstances, it is quite clear that the property in dispute is the self-acquired property of Chet Ram and is not his ancestral property. It appears that Chet Ram himself got the present suit instituted by his children and his wife simply to save the property from his creditors. Our finding is that the property in question is not ancestral but is the personal and self-acquired property of Chet Ram and so it is liable to attachment and sale in execution of decrees passed against Chet Ram.

The other points urged by the appellants' learned counsel are that the will executed by *Mst.* Mathra Devi in favour of Mela Ram respondent was not valid and that the decrees obtained by Mela Ram against Chet Ram were defective and could not be executed. These are however matters which are entirely between the decree-holder and the judgment-debtor and in view of our clear finding that the property in dispute is not ancestral but is the self-acquired property of the judgment-debtor, it is not necessary to discuss these matters in this appeal. When it has been found that the property is not ancestral and has not come to the share of the plaintiffs, the plaintiffs have no *locus standi* to object to the attachment of the judgment-debtor's personal property.

The appeal is dismissed with costs.

Appeal dismissed.

---

39 P. L. R., J. & K., 138.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

MAHASHA RAM LAL, *versus* *Mst.* ISHWARI *alias* KAJNUN

DECREE-HOLDER—APPLICANT, JUDGMENT-DEBTOR—NON-APPLICANT.

Civil Revision No. 76 of 1993.

Jammu, 19th *Maghar* 1993/31st January 1937.

Final decree for foreclosure of a house passed. No appeal lodged against this decree subsequently judgment-

debtor put in an application that she has a right to live during lifetime. This application rejected. Appeal filed and the District Judge remanded the case that fresh orders be passed in regard to the applicant's right to stay in the house.

Held, that, the order of the District Judge was irregular and without jurisdiction as its object would obviously be to interfere with final decree not appealed against.

Revision against the order of District Judge, Jammu, dated 15th *Chet* 1992.

Mr. Rup Chand Nanda, for Applicant.

Lala Mukand Lal, for Non-applicant.

ORDER.

On 16th *Chet* 1990 a preliminary decree was passed by the Munsiff Reasi by which the defendant was directed to pay to the plaintiff a sum of Rs. 225 by the 6th *Sawan* 1991. It was also laid down in the decree that if the amount was not paid by the 6th of *Sawan* 1991, final order for foreclosure shall be passed under Order 34, Rule 3 of the Code of Civil Procedure. On 3rd *Bhadon* 1991 the decree-holder applied to the trial court that as the amount had not been paid by the judgment-debtor up to that time a final decree for foreclosure be passed according to Order 34, Rule 3. A notice was issued to the judgment-debtor in regard to this application and the judgment-debtor filed her objections One of the objections was that she was entitled to live in the house in question during her lifetime and that she could not be ejected from that house. On 25th *Magh* 1991 the trial court passed the final decree for foreclosure under Order 34, Rule 3 of the Code of Civil Procedure. On 13th *Bhadon* 1992 the judgment-debtor filed an application in the trial court to the effect that the possession of the house which had been given to the decree-holder according to the decree referred to above be restored to her as she was entitled to live in the house during her lifetime. By its order dated 29th *Maghar* 1992 the trial court dismissed the application as being incompetent. On appeal the learned District Judge set aside the order of the trial court dated 29th *Maghar* 1992 and remanded the case with the direction that fresh orders may be passed in regard to the appellant's right to stay in the house in question. Against this order of the lower appellate court the present application in revision has been filed by the decree-holder.

I think that the order passed by the learned District Judge on appeal was irregular and without jurisdiction. The final decree in the foreclosure suit, which was passed on 25th *Magh* 1991 was an absolute decree as no appeal has been filed against that decree. So that absolute decree could not be altered or varied by the District Judge. The effect of the order now passed by the District Judge would obviously be to interfere with the final decree passed on 25th *Magh* 1991 and this cannot be allowed. The lower appellate court had no jurisdiction whatsoever to vary or alter the terms of the final decree passed on 25th *Magh* 1991 and as such the order passed by the District court is without jurisdiction. I therefore accept this application in revision and setting aside the order of the lower appellate court restore the order of the trial court dated 29th *Maghar* 1992.

The parties shall bear their own costs in this court.

Revision accepted.

---

39 P. L. R., J. & K., 140.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice.

RADHA KISHEN *versus* MANDIR SHIVJI.

MANDIR SHIVJI *versus* RADHA KISHEN.

Civil Second Appeal Nos. 125 and 136 of 1993.

Jammu, 17th *Poh* 1993/31st December 1936.

A and B are owners of adjoining houses and plots of land. A's plot is higher up and B's plot is lower down. B did some digging in his own land to bring it on a level with the public road. A considered that by this digging one of his walls fell down and there was danger of similar damage if this digging in B's land continued. In a suit for damages and grant of injunction to restrain B from further digging it was held that A had no cause of action as B's object in doing some digging in his own land was simply to improve it and to bring it on a level with the public road and that with that object in view B was perfectly entitled to use and improve his own land in any way he liked.

Appeals against the order of Additional District Judge, Jammu, dated 14th *Jeth* 1993.

Mr. Chaman Lal, Advocate.

Mr. Pindi Dass, Vakil.

JUDGMENT.

The plaintiff and the defendant are owners of adjoining houses and plots of land near Danis Gate Jammu. The

plaintiff's plot is higher up while the defendant's plot is lower down. The defendant did some digging to bring his land on a level with the public road below. The plaintiff considered that by this digging on the part of the defendant one of the plaintiff's walls fell down and there was danger of similar damage to the rest of his property if these digging operations on the part of the defendant continued. The plaintiff therefore instituted a suit for the recovery of Rs. 100 by way of damages for the loss he had already incurred and for the grant of an injunction restraining the defendant from making any further digging in his land. The plaintiff also claimed that a strip of land six feet by forty four feet belonging to him had been wrongfully encroached upon by the defendant and he wanted a decree for possession in regard to this strip of land. The trial court passed a decree for Rs. 100 as damages in favour of the plaintiff and also issued an injunction restraining the defendant from doing any further digging in his land but dismissed the plaintiff's suit in regard to the possession of the strip of land referred to above. Against this decree both the parties filed appeals in the court of the District Judge. The learned District Judge set aside the decree of the trial court so far as it related to the grant of damages of Rs. 100 to the plaintiff and the issue of the injunction against the defendant but passed a decree in favour of the plaintiff for the possession of the strip of land six feet by forty four feet. Both the parties have now come in further appeal to this court. This judgment will govern the decision of both the appeals.

In regard to the digging operations performed by the defendant in his own land I see no reason to interfere in the finding of the lower appellate court. The object of the defendant in digging a portion of his land was simply to improve his own land and to bring it on a level with the public road so that he may have an easy access to that road. There can be no doubt that the defendant was perfectly entitled to use and improve his own land in any way he liked. If the plaintiff did not like this sort of activity on the part of the defendant the plaintiff ought to have taken his own precaution to safeguard his interests and obviously he could not compel the defendant to do all that for him. In these circumstances the lower appellate court was quite right in dismissing the plaintiff's claim for a sum of Rs. 100 by way of damages and also refusing to issue any injunction against the defendant for future.

As regards the strip of land in dispute it is admitted that a wall belonging to the plaintiff exists on the point where the land in dispute meets the public road. This wall obviously could not have belonged to the plaintiff if the strip of land now in dispute was not the property of the plaintiff. Besides this when the plaintiff applied to the Cantonment authorities for permission to build, the strip of land now in dispute was shown as the plaintiff's property. Besides this strip of land is the communicating link between the plaintiff's land and the public road. In these circumstances I think that the decree for the possession of this strip of land has been rightly given to the plaintiff by the lower appellate court.

In the result both the appeals are dismissed with costs. A copy of this order shall also be placed on the other appeal.

Appeal dismissed.

---

39 P. L. R., J. & K., 142.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice, and Mr. Justice Janki Nath Wazir.

Mst. DAULAT BIBI *versus* MOH'D SHAFI. AND OTHERS

Civil Second Appeal No. 47 of 1993.

Jammu, 31st *Chet* 1993.

In a suit for restitution of conjugal rights there was a dispute between the parties in regard to the age of defendant. The girl was deliberately concealed by her parents and not produced in the court. On second appeal the case was remanded by the High Court with direction that the girl should be examined and fresh orders passed after that examination. The girl was subsequently examined and it was found that the age of the girl was not as was originally represented by her father.

Held, that, in cases of restitution of conjugal rights the examination of the parties is absolutely essential. Also when there is dispute between the parties in regard to the age of the defendant the courts should ordinarily insist on the production of the defendant in the court.

Appeal against the order of District Judge, Jammu, dated 11th *Maghar* 1993.

Mr. Kundan Lal.

Mr. Loknath Sharma.

JUDGMENT.

The plaintiff instituted a suit on 1st *Katik* 1988 for restitution of conjugal rights against *Mst.* Daulat Bibi. The plaintiff's claim was that he married to *Mst.* Daulat Bibi about eight years before the institution of the suit and that at the same time his sister *Mst.* Barkat Bibi was married to *Mst.* Daulat Bibi's brother Ghulam Ali so that his marriage with *Mst.* Daulat Bibi was by way of "*Dohri ka nata*". It was further urged by the plaintiff that *Mst.* Doulat Bibi lived with him as his wife for some time but when subsequently his sister *Mst.* Barkat Bibi died, *Mst.* Daulat Bibi was taken back by her parents and was not sent to him. The defendant *Mst.* Daulat Bibi pleaded that she was never married to the plaintiff. The trial court dismissed the plaintiff's suit and that decree was upheld by the District Judge Jammu. The matter then came in second appeal to the High Court. It was urged in the High Court on behalf of the plaintiff that inspite of repeated orders by the trial court the girl *Mst.* Daulat Bibi was never produced in the trial court and was deliberately concealed by her parents as it was feared by them that if she appeared in the court and was examined the true state of affairs would come to light. It was also represented that there was a dispute in regard to the age of the girl and for this reason too the girl was not produced so that her correct age might not be known by the court. It was contended by the plaintiff that at the time of the institution of the suit in Samvat 1988 the girl was about 20 years of age while it was represented by the girl's father Anayat Ullah that the girl was only 12 years of age at that time. It was held by this court that in a case like this the examination of the girl was essential and so by the order of this court dated *27*th *Poh* 1991 the orders of the lower courts were set aside and the case was remanded for fresh enquiry and fresh orders after the examination of the girl *Mst.* Daulat Bibi. The girl has since been examined and further documentary evidence in regard to the marriage of the girl has also been produced. The trial court again dismissed the plaintiff's suit but on appeal the learned District Judge of Jammu reversed the order of the trial court and decreed the plaintiff's suit. The defendants have now come in second appeal to this court.

Reference shall be made to the order of this court dated 27th *Poh* 1991. When the appeal first came to this court it was vehemently urged by the girl's father Anayat Ullah that

the girl was only 12 years of age at the time of the institution of the suit in 1988. But this contention of the girl's father has been found to be absolutely false. The girl was examined by the trial court on 13th *Har* 1992 and in the opinion of the court the girl, appeared to be of 23 years of age. This means that the girl was about 19 years of age at the time when the suit was instituted in 1988. The girl was also medically examined on the 25th *Magh* 1992 and in the opinion of the lady doctor who examined the girl the girl's age at that time was between 20 and 25 years. This shows that the plea urged by the father of the girl Anayat Ullah that the girl was only about 12 years of age at the time when the suit was instituted was entirely wrong. In cases of restitution of conjugal rights the examination of parties is absolutely essential and when there is a dispute between the parties in regard to the age of the defendants the courts should insist on the production of the defendant in the court.

The plaintiff's claim was that his marriage with *Mst.* Daulat Bibi was by way of '*Dohri ka nata*". Before the case was remanded by this court the original entry in the register of Nika in regard to the marriage of Ghulam Ali with plaintiff's sister *Mst.* Barkat Bibi was produced and in that entry it was clearly mentioned that the marriage of Ghulam Ali with the plaintiff's sister was by way of "*Dohri ka nata*". This entry also bore the signature of *Mst.* Daulat Bibi's father Anayat Ullah and in his statement dated 27th Jeth 1989 Anayat Ullah could not deny it. Now the original entry in regard to the marriage of the plaintiff with *Mst.* Daulat Bibi on 10th *Har* 1981 has also been produced. An attempt was originally made by the persons incharge of the marriage register to suppress the entry in regard to the marriage of the plaintiff with *Mst.* Daulat Bibi but this attempt was not successful and the entry was at last forthcoming. This entry in the register of marriages is supported by the evidence of Fattehdin, Ahmad Din and Umar Din. No satisfactory reason has been shown as to why the documentary evidence produced in regard to the plaintiff's marriage with *Mst.* Daulat Bibi should not be relied upon. The oral evidence produced by the defendants is of a vague nature and it is obvious that as against that evidence the documentary evidence as contained in the register of marriages is of a more valuable nature.

In these circumstances we think that the plaintiff's suit has been rightly decreed by the lower appellate court.

The present appeal is dismissed with costs.

Appeal dismissed.

---

39 P. L. R., J. & K., 145.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice, and Mr. Justice K. L. Kichlu.

MANI RAM AND OTHERS *versus* JEW NATH AND OTHERS.

Civil Revision No. 6 of 1993.

Jammu, 18th *Chet* 1993.

According to Order 47 Rule 1 of the Code of Civil Procedure the discovery of a new and important matter of evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed can form a ground for a review of the decree. But it must be first satisfactorily established by the applicant that the matter said to have been subsequently discovered was, inspite of due diligence, not within his knowledge or could not be produced by him at the time when the decree was passed. If there was no new discovery and the matter was already within the knowledge of the applicant when the decree was passed, the alleged discovery will be no ground for review of the decree.

Review against the order of Division Bench No. III, dated 4th *Maghar* 1993.

Messrs. Thakar Dass and *Nand Lal.*

Mr. Chaman Lal.

JUDGMENT.

This application for review of the judgment of this court dated 4th *Maghar* 1993 has been made on the ground that an important document dated 17th *Har* 1976 which has a direct bearing on the property in dispute could not be produced at the time when the decree of this court was passed as it was not within the knowledge of the applicant at that time. A copy of this document has now been produced and it purports to embody the finding of a local Sabha called

the Brahman Sabha of Jammu in regard to the division of the property between the applicant and his brother. According to Order 47 Rule 1 any person considering himself aggrieved by a decree may apply for a review of the judgment of the court which passed the decree on the ground of discovery of a new and important matter of evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed. In the present case it is claimed on behalf of the applicant that the document which has now been produced was not within the knowledge of the applicant at the time when the decree was passed. But on examining the record we find that this contention is not correct. In the trial court some of the plaintiff's own witnesses particularly referred to the fact that a dispute in regard to the division of the property between the applicant and his brother was referred to the Brahman Sabha Jammu for decision. In this connection the evidence of Raizada Sant Ram, Pandit Banke Behari and Harichand Mantri is very important. When the applicants' own witnesses mentioned in the trial court that the dispute between the applicant and his brother was referred to the Brahman Sabha for decision, it cannot be supposed that even after hearing the evidence of these witnesses the applicant never thought of the decision of the Brahman Sabha on the point and that the question that the matter was ever referred to the Brahman Sabha was totally outside his knowledge. The litigation between the parties remained pending for several years and the applicant never referred to the document now produced either in the trial court or in the court of the District Judge or in the High Court. In these circumstances we do not think that the document now produced was not within the knowledge of the applicant at the time when the decree of this court was passed. So the mere production of this document does not in our opinion form any ground for reopening the whole case.

The review application is dismissed with costs.

Application dismissed.

———

39 P. L. R., J. & K., 147.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu and Mr. Justice Janki Nath Wazir.

SUBHAN DAR *versus* USTA KARIM AND ANOTHER.

Civil Second Appeal No. 62 of 1993.

Jammu, 17th *Har* 1994.

What constitutes 'sufficient cause' under section 5 of the Limitation Regulation cannot be laid down by hard and fast rules. It must be decided by a reference to all the circumstances of each particular case with a view to secure furtherance of justice.

The words 'sufficient cause' should receive liberal construction.

Appeal against the order of District Judge, Srinagar, dated 16th *Poh* 1993.

Mr. Gana Lal, for Appellant.
Mr. Sundar Lal, for Respondent.

JUDGMENT.

An appeal preferred by the present appellant was dismissed by the learned District Judge of Kashmir as barred by limitation. The learned Judge held that the appellant had failed to show that there was 'sufficient cause' for extension of time under section 5 of the Limitation Regulation. The appellant has now come up in second appeal to this court.

It has been urged by the learned Counsel for the appellant that his client had, in the first instance, presented the memorandum of appeal in the court of the Senior Subordinate Judge Srinagar as the case had at an earlier stage been decided on appeal by that court and had been remanded. His contention is that it was on this account that the appellant was misled in filing the appeal in the court of the Senior Subordinate Judge instead of in the District Court. It is admitted that the Senior Subordinate Judge was not competent to hear the appeal as the pecuniary value of the appeal was over Rs. 200. The only point for consideration, therefore, is whether the appellant is entitled to the benefit of Section 5 of the Limitation Regulation. That the appeal was filed

within time in the court of the Senior Subordinate Judge is not disputed. The appeal was admitted by the Senior Subordinate Judge and it appears that the hearing of the appeal was adjourned on more than one occasion. During all this time no objection appears to have been raised either by the court or by the respondents that the appeal did not lie to the court of the Senior Subordinate Judge. It was on the 25th of *Har* 1993 that the court discovered that the appeal was beyond its pecuniary appellate jurisdiction. It accordingly returned the memorandum of appeal to the appellant who presented the same in the District Court that very day. It appears that at the time the appeal was filed in the court of the Senior Subordinate Judge the appellant had not engaged any counsel and it was very likely on the advice given by the petition-writer, who wrote the appeal, that he presented it in that court. Under the circumstances, there can be no manner of doubt that the mistake was bona fide as the appeal had at one stage of the case previously been heard and disposed of by the court of the Senior Subordinate Judge.

What constitutes 'sufficient cause' cannot be laid down by hard and fast rules. It must be determined by a reference to all the circumstances of each particular case with a view to secure furtherance of justice. The words 'sufficient cause' should, in our opinion, receive liberal construction.

Having regard to the fact that the memorandum of appeal was filed in the wrong court, was admitted by that court without any objection and the appellant had on a previous occasion also approached that court who had exercised its appellate jurisdiction, the mistake must be taken to be a bona fide one. We are inclined to think that the learned District Judge should not have dismissed this appeal as barred by time and ought to have given the appellant the benefit of Section 5 of the Limitation Regulation. Taking into consideration the particular facts of this case, we are definitely of opinion that this is a fit case for the exercise of the discretion given by Section 5. We accordingly accept the appeal, set aside the order of the lower appellate court and direct that the appeal shall be re-numbered and decided according to law.

Costs of this court shall abide the event.

Appeal accepted.

———

39 P. L. R., J. & K., 149.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice Janki Nath Wazir.

Mst. MALA BIBI *versus* *Mst.* TAJA BIBI AND OTHERS.

Civil Second Appeal No. 75 of 1993.

Srinagar, 30th *Har* 1994.

According to Tribal Customs in Kashmir if a widow with a daughter survives the deceased husband, the whole of the property will devolve upon the daughter if she is kept at home with her husband i. e. if she is a Dukhtar-i-Khana Nashin.

Where a person has knowledge of mutation proceedings or is present at the time of mutation and he is entitled to object to it but does not do so, he cannot challenge the mutation subsequently.

Non-production of available material documents raises adverse presumption.

Appeal against the decree of Senior Subordinate Judge, Srinagar, dated 24th *Bhadon* 1993.

Mr. Abdul Ahad, Vakil.

Mr. Sarvanand, Vakil.

JUDGMENT.

This is a second appeal arising out of a suit instituted in the court of Sub-Registrar Munsiff Srinagar by *Mst.* Mala Bibi wife of Aziz Shah against the defendants Yusaf Ali etc. for a declaration to the effect that the plaintiff is the Khana Nashin daughter of Moh'd Lasi and that as such is entitled to inherit her father's agricultural land. The defendants denied her status of being a Khana Nashin daughter and pleaded that she was not entitled to the agricultural land of her father. The trial court decreed the suit in favour of the plaintiff and the defendants preferred an appeal from that order to the court of Senior Subordinate Judge Srinagar. The learned Senior Subordinate Judge struck following two additional issues and remanded the case under Order 41 rule 25 of the Civil Procedure Code to the trial court for recording additional evidence. The issues were (1) "whether there was no rule or practice in force prior to S. 1980 to effect mutation in the name of Khana Nashin daughters O. P. on plaintiff, and (2) If the plaintiff failed to prove the above issue whether omission on her part to secure mutation or at least to raise an objection at the time when mutation was effected in the name of *Mst.* Asha Bibi amounts to estoppel adversely affects her title to

succeed to her father's land as Khana Nashin daughter otherwise proved as such". The trial court recorded additional evidence on the two issues and found both the issues against the plaintiff. The Senior Subordinate Judge after carefully going through the record and taking into consideration the finding of the trial court on the additional issues came to the conclusion that the plaintiff was not a Khana Nashin daughter of her father Moh'd Lasi and accordingly dismissed the plaintiff's suit with costs.

In this second appeal it has been urged on behalf of the appellant that her father died in the year 1967 and the mutation of her agricultural land was effected in favour of his widow *Mst.* Asha Bibi. *Mst.* Asha Bibi made a statement at the time of mutation that her son-in-law Aziz Shah should be made her Sarbarah. There was no evidence to show that Aziz Shah was present at the time when the mutation was effected and therefore the learned Senior Subordinate Judge was wrong in holding that Aziz Shah being present at the time of mutation ought to have objected to the mutation being effected in favour of *Mst.* Asha Bibi instead of his wife *Mst.* Mala Bibi and as Aziz Shah never raised any objection at the mutation proceedings therefore he and his wife the present appellant were estopped from raising the plea that she was the Khana Nashin daughter of her father the deceased Moh'd Lasi. It has been further urged by the counsel for the appellant that the Senior Subordinate Judge was wrong in holding that the plaintiff is not a Khana Nashin daughter because she failed to produce the Nikah Namas which were in her possession or in the possession of her husband. He submitted that among Kashmiri Mohammedans when the daughters are married the Nikah Nama is retained by the father of the daughter and a copy thereof is given to the husband and as the Nikah Namas were not in the possession of the plaintiff so she could not produce them. The Senior Senior Subordinate Judge ought not to have drawn the presumption against the plaintiff appellant merely because she failed to produce the Nikah Namas.

As regards the first contention of the appellant that she and her husband however were not present at the time of mutation and therefore the mutation proceedings did not stop her from setting up a plea that she was a Khana Nashin daughter, is devoid of all force. It is admitted that the plaintiff, her husband and the widowed mother *Mst.* Asha Bibi

lived together when the mutation took place. *Mst.* Asha Bibi undoubtedly was present and she stated that her son-in-law would act as her sarbarah. It could not be believed that her son-in in-law Aziz Shah who was living in the same house with her mother-in-law, *Mst.* Asha Bibi, had no knowledge of the mutation being effected in the name of *Mst.* Asha Bibi. Besides one of the plaintiff's witnesses Syed Ghulam Shah deposed that during the mutation proceedings Aziz Shah was acting as Sarbarah of his mother-in-law Asha Bibi. It shows that he had full knowledge of the fact that mutation was being effected in the name of *Mst.* Asha Bibi, the widow of Moh'd Lasi. His wife the present appellant was living with her husband and could not be ignorant of the fact that mutation was being effected in the name of her mother *Mst.* Asha Bibi, the widow of Moh'd Lasi. She having failed to put up her claim at that time is a strong piece of circumstance which goes against her. It has been argued by the counsel for the appellant that after the death of the father agricultural lands are mutated in the name of his widow for her life time and not in the name of Khana Nashin daughter. No instance to this effect was given by the plaintiff in the trial court, while there are instances put forward by the defendants to show that the mutation is effected in favour of a Khana Nashin daughter and not in favour of a widow. The answer to question No. 49 of the Tribal Customs in Kashmir also is very clear. The question is:—"If a man dies leaving a widow or widows, and either a daughter or daughters, or brothers or their descendants or uncles or their descendants, or great uncles or their descendants, but no male lineal descendants, upon whom will the inheritance devolve? The answer is:—"If a widow with a daughter survives the deceased husband; the whole of the property will devolve upon the daughter if she is kept at home with her husband (Dukhtar-i-Khana Nashin with Khanadamad)." So at the time the mutation was effected in favour of *Mst.* Asha Bibi widow of Moh'd Lasi the plaintiff could have put forward her claim as being the Khana Nashin daughter but having failed to do so she has rightly been held to have been estopped from putting forward this plea. The reason for not producing the Nikah Nama as given by the learned counsel for the appellant is not at all satisfactory. It may be presumed that the first Nikah Nama of the plaintiff was not in her possession while her first husband were alive but both of them having died in the same house the Nikah Nama surely

would have come in the possession of the plaintiff and she would have treasured it because there would be a recital to the effect that she was a Khana Nashin daughter of her father. As regards the second Nikah Nama it must be either with her or with her husband Aziz Shah and if she was a Khana Nashin daughter there should have been an entry to that effect in her second Nikah Nama also. The second Nikah Nama has been withheld by the plaintiff which shows that the Nikah Nama is silent about her being a Khana Nashin daughter of Mohd. Lasi. I think the learned Senior Subordinate Judge has rightly drawn the presumption against the plaintiff on the ground of her with-holding the Nikah Namas which were in her possession or in the possession of her husband. Under these circumstances I do not see that any adequate ground has been made out by the learned counsel for the appellant which justifies my interference with the findings of the lower appellate court.

This appeal fails and is accordingly dismissed. In the peculiar circumstances of the case I leave the parties to bear their own costs in this court.

Appeal dismissed.

---

39 P. L. R., J. & K., 153.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu and Mr. Justice J. N. Wazir.

AZIZ MIR *versus* STATE THROUGH MUNICIPALITY, SRINAGAR.

KUDA BAT *versus* STATE THROUGH MUNICIPALITY, SRINAGAR.

Criminal References Nos. 17 & 18 of 1993.

Srinagar, 24th *Har* 1994.

Competency of magistrate to order under section 57 State Municipal Regulation recovery of arrears due to a Municipal Committee under a contract.

Held, that a dispute regarding arrears alleged to be due from the petitioners to the Municipal Committee is clearly one between a creditor and a debtor for the recovery of money due under a contract and is determinable by a Civil Court.

Criminal references made by the Sessions Judge, Srinagar, dated 24th *Magh* 1993.

Petitioners present in person.

Government Advocate.

JUDGMENT.

The City Magistrate Srinagar dircted certain arrears alleged to be due from the petitioners to the Municipal Committee Srinagar to be recovered under the provisions of section 57 of the Municipal Regulation. These cases have been referred for orders of this court by the learned Sessions Judge of Kashmir with the recommendation that the orders passed by the Magistrate be set aside. This order shall govern the disposal of both these cases.

It has been frankly admitted by the learned Government Advocate that he cannot support the orders passed by the trial court. It appears that the Municipal Committee of Srinagar claimed some arrears as rent of the land leased out to the petitioners. The dispute is clearly one between a creditor and a debtor for the recovery of money due under a contract and is determinable by a civil court. The orders passed by the Magistrate therefore are not maintainable. We accordingly accept the recommendation made by the learned Sessions Judge in both the cases and set aside the orders passed by the City Magistrate Srinagar.

The files shall be returned with a copy of this order.

A copy of this order shall be placed on the other file also.

Recommendation accepted.

———

39 P. L. R., J. & K., 154.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice
and Mr. Justice K. L. Kichlu.

KH. AMKALA *versus* NAZIR.

Civil Second Appeal No. 143 of 1993.

Jammu, 4th *Chet* 1993.

In a suit for damages for malicious prosecution, it must be proved by the plaintiff that there was a prosecution of the plaintiff. The stage of prosecution begins after a process is issued by the court and not before that. So where no process is issued by the court for the attendance of the plaintiff no suit for malicious prosecution will lie. Proceedings before the Police are distinct from a prosecution for the purposes of a suit for malicious prosecution. 1936 Rangoon 95, 1931 Allahabad 665, 1930 Calcutta 392 and 1926 Madras 521, followed.

Appeal against the order of Additional District Judge, Jammu, dated 4th *Chet* 1992.

Mr. Ram Lal Anand.

Mr. Rup Chand Nanda.

JUDGMENT.

The defendant filed a complaint of extortion against the plaintiff in the court of the Sub-Divisional Magistrate Reasi. The Magistrate sent the complaint to the local Police under section 202 of the Criminal Procedure Code for investigation. After making necessary investigation the police did not support the complaint and upon that the complaint was dismissed by the Sub-Divisional Magistrate without issuing any process to the person complained against. The plaintiff then filed a suit for damages of Rs. 500 against the defendant for malicious prosecution. The trial court decreed the plaintiff's suit but on appeal the learned Additional District Judge of Jammu set aside the decree and dismissed the plaintiff's suit. The plaintiff has now come in second appeal to this court.

The lower appellate court dismissed the plaintiff's suit on the ground that no process was issued against the plaintiff by the Magistrate and as such there was no prosecution of the plaintiff and so the present suit for malicious prosecution was not competent. It is contended in this appeal that as certain investigation was made by the police in respect of the plaintiff that investigation may be regarded as equivalent to

a prosecution of the plaintiff. We do not agree with this view put forward by the appellant's learned counsel. In this connection reference has been made to a number of rulings of the British Indian High Courts but we think that out of the rulings cited the rulings directly bearing on the point are *1936 Rangoon 95, 1931 Allahabad 665, 1930 Calcutta 392* and *1926 Madras 521*. In *1936 Rangoon 95* it has been held that until a process is issued, a person of whose conduct complaint is made, is not an accused person nor is he being prosecuted and that in such circumstances a suit for malicious prosecution does not lie. In this ruling the whole case law on the point was discussed and *37 Calcutta 358* and *38 Calcutta 880* were followed. In *1931 Allahabad 665* the same view was held. It was held that a suit for damages for malicious prosecution will not lie where no process has been issued by the Magistrate for the attendance of the person accused. In this ruling also the case law on the subject was discussed and *37 Calcutta 358, 38 Calcutta 880, 37 Madras 181* and *1929 Patna 271* were followed. Similarly in *1926 Madras 521* it was held that where a petition for action under Section 107 of the Criminal Procedure Code was dismissed without issuing any notice to the plaintiff there was no prosecution of the plaintiff and consequently no action for damages for malicious prosecution would lie. In *1930 Calcutta 392* it was held that proceedings before the Police are proceedings anterior to "prosecution" and are distinct from a "prosecution" for the purposes of a suit for malicious prosecution. We are in full agreement with the views expressed in the above rulings. In the present case no process was issued by the Magistrate against the plaintiff and so there was no prosecution of the plaintiff and as such the present suit for damages for malicious prosecution is not competent.

The appeal is dismissed with costs.

Appeal dismissed.

39 P. L. R., J. & K., 156.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu.

CENTRAL CO-OPERATIVE BANK THROUGH M. GHULAM MOHAMMAD BEG. *versus* P. BHAGWAN DAS OF ANANTNAG.

Civil Revision No. 31 of 1993.

Srinagar, 25th *Jeth* 1994.

According to rule 16 of the rules framed under section 43 (1) of the State Co-operative Act of 1990 the only remedy open to a member in regard to a dispute with the society is by way of a reference to the Registrar and a civil court cannot take cognizance of a suit of that nature.

Revision against the order of Munsiff, Anantnag, dated 16th *Maghar* 1993.

Mr. Satpal, for applicant.

Mr. Gana Lal, for non-applicant.

JUDGMENT.

The only point for determination in this revision application is whether the plaintiff-non-applicant is a member of a Co-operative Society. The plaintiff non-applicant in his statement dated 30th *Katik* 1993 admitted that he was a share-holder of Central Co-operative Bank Anantnag. The trial court appears to have ignored this point as in its judgment it has stated that the plaintiff simply admits that he is a depositor of the bank. This, however, is not correct. As stated above the plaintiff has clearly admitted that besides being a depositor he is a share-holder of the Society called the Anantnag Co-operative Bank Limited. In view of the admission that he is a share-holder of the Society and as such a member thereof the suit was clearly excluded from the cognizance of a civil court. According to rule 16 of the rules framed under section 43 (1) of the State Co-operative Act of 1990 the only remedy open to a member in regard to a dispute with the Society is by way of a reference to the Registrar and a civil court cannot take cognizance of a suit of that nature. As stated above the plaintiff is clearly a member of a Co-operative Society and as his dispute is with the Society the case is not cognizable by a civil court. The revision application is accordingly accepted and the order of the trial court set aside. The parties shall, however, bear their own csts of this litigation.

Petition accepted.

39 P. L R, J. & K., 157.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice
and Mr. Justice J. N. Wazir.

SANTOKH SINGH *versus* STATE.

Criminal First Appeal No. 33 of 1993.

Jammu, 11th *Chet* 1994.

An accused person can be legally convicted on the basis of his own confession provided it was found that the confession was made by him voluntarily of his own free will and accord. 1935 Oudh 354 and 1934 Lahore 89, followed.

The entire confession of an accused person should not be rejected merely because a part of it has been found to be false. 1934 Oudh 222, followed.

Appeal against the order of Additional Sessions Judge, Jammu, dated 29th *Phagan* 1993.

Mr. Anant Ram Gupta, Amicus curiae, for Appellant.

Government Advocate.

JUDGMENT.

The accused Santokh Singh has been convicted by the learned Additional Sessions Judge, Jammu, under section 302 of the Ranbir Penal Code and sentenced to life imprisonment subject to confirmation by His Highness the Maharaja Bahadur. The accused has filed this appeal against the conviction and sentence. The learned Additional Sessions Judge Jammu has also made a reference for the confirmation of life imprisonment by His Highness the Maharaja Bahadur. This judgment will dispose of the appeal as well as the reference.

This case has come to the High Court for the second time. The accused was previously convicted by the learned Sessions Judge Jammu for the offence of murder and was sentenced to death. That order of the learned Sessions Judge was set aside by this court on account of a material legal defect *vide* order of this court dated 26th *Poh* 1993. The legal defect was that in the first trial the mandatory provisions of law as contained in section 339-A of the State Code of Criminal Procedure were totally ignored by the trial court and as such the entire trial was illegal. In connection with the murder of one Ibrahim a tender of pardon was made to the present accused Santokhsingh. Subsequently on the report of the Public Prosecutor Jammu the pardon was withdrawn and the accused was tried on a charge of murder. According to section 330-A of the Code of Criminal Procedure

it was essential that before the accused was tried for the offence in respect of which the pardon was tendered to him a proper enquiry should have been made in regard to the point as to whether the accused had complied with the conditions on which the tender of pardon was made to him and a clear finding ought to have been recorded as to whether or not the accused had complied with the conditions of the pardon. No such enquiry was made by the trial court and that omission vitiated the entire proceedings. That defect has now been remedied and a finding has been recorded by the learned Additional Sessions Judge after a proper enquiry that the accused has forfeited the pardon which was tendered to him. After that finding the retrial of the accused on a charge of murder was started and he has been convicted and sentenced as mentioned in paragraph I of the judgment.

The facts of the case are briefly as follows:—

One Chhaju Shah of Chak Barwal in Tehsil Samba and Ibrahim of the adjoining village Nanga were on bad terms. A theft was committed in the house of Chhaju Shah and Chhaju Shah got a search made of Ibrahim's house on suspicion. Ibrahim resented this action on the part of Chhaju Shah and he gave Chhaju Shah shoe beating after some time. It is also stated that Ibrahim gave a threat to Chhaju Shah that he would kill him whenever he found a suitable opportunity. Chhaju Shah was therefore afraid of Ibrahim and he wanted to get rid of him. Babusingh and the present accused Santokh Singh lived in another adjoining village called Gobind Garh. Chhaju Shah approached Babusingh and offered to give him a sum of one thousand rupees if he killed Ibrahim. Babusingh took Santokhsingh in his confidence and they both conspired to kill Ibrahim whenever a suitable chance occurred. Babusingh owed a sum of Rs. 40 to Ibrahim and according to the prosecution Ibrahim went to the house of Babusingh on 30th *Chet* 1992 to recover the debt from Babusingh. While Ibrahim was still in the house of Babusingh, Babusingh managed to go to the house of Santokhsingh and informed him that the victim was present in Babusingh's house and their chance of winning their reward had arrived. Babusingh accompanied by Santokhsingh returned to his house where Ibrahim was still waiting—Ibrahim was unaware of the trap which had been laid up for him. When Ibrahim demanded his money from Babusingh, the latter suggested that all the three *i. e.*, Babusingh, Santok-

singh and Ibrahim would go to village Bandral and there they would see Bhangra and Babu Singh would also arrange to get a sum of Rs. 40 from somebody there. About the evening time all the three left for village Bandral. Babusingh led the way and was followed by Ibrahim and Santokhsingh was behind Ibrahim. Ibrahim was thus kept between Babusingh and Santokhsingh. Santokhsingh carried a karpan underneath his clothes and Babusingh secretly carried a toka on his person. They first passed village Rajwal and there all the three were seen by Nashru, Taj Din and Mangtu. After stopping for some time at Rajwal the party of three, Babusingh, Ibrahim and Santokhsingh left toward Bandral. It was night time now. When the party reached a place called Jhungi, Santokhsingh struck a blow with his karpan on Ibrahim from behind. On this first attack upon Ibrahim being made by Santokhsingh, Babu Singh who was walking in front also took out his toka and wanted to strike Ibrahim. Ibrahim snatched the toka from Babusingh's hand and with that toka inflicted an injury on the head of Santokhsingh. After giving this injury to Santokhsingh Ibrahim staggered and fell down on the ground. Then according to the prosecution Ibrahim was given further blows by Santokhsingh and Babusingh and was killed on the spot. The dead body of Ibrahim was dragged to a wheat field and left there. After committing the murder both Babusingh and Santokhsingh returned to their village Gobindgarh. Babusingh went to Chhaju Shah to demand the reward of one thousand rupees but he soon came back and informed Santokhsingh that the reward would be given by Chhaju Shah after some time when the matter had been completely hushed up. Chhaju Shah had also suggested to Babusingh that the dead body should not be left exposed but should be burried somewhere. So Babusingh and Santokhsingh went back to the place where the body was lying and then they burried the body in a pit dug with a *kahi* which had been taken by them when they went to the spot second time. The kahi, toka and the karpan were also burried in a pit near the nalla. After that both Babusingh and Santokhsingh returned to their houses. In the morning of 1st *Baisakh* 1993 Babusingh left for village Amelpore on the suggestion of Chhaju Shah. At about 10 A. M. on that day *i. e.* 1st *Baisakh* 1993 Santokhsingh approached Chhaju Shah for the money but Chhaju Shah told him that the body should be taken out of

the pit and should be cut to pieces and the pieces should be disposed of at some distance from the place where the murder had been committed. On the night of 1st *Baisakh* 1993 Santokhsingh took Babusingh's brother Jagatsingh with him and they both went to the place where the body had been burried. They first took out the karpan, toka and kahi from the nalla and after that they took out the dead body from the pit. The head and the legs were cut off the body and the pieces were put in a sack and taken to Basanter nalla. There the head was burried in one pit while the trunk and the legs were put in another pit. The karpan belonging to Santakhsingh was burried by Santokhsingh in a manure heap near the village while the toka was taken away by Babusingh's brother Jagatsingh.

On the morning of 2nd *Baisakh* 1993 one Bhagat Singh who afterwards appeared as a defence witness noticed some marks of blood on the foot-path towards the south of village Bandral. He informed Kaurasingh lambardar of the village and the latter reported the matter to the Police. The Sub-Inspector of Police arrived at the village the same day and he also saw marks of blood pointed out by Bhagatsingh. A freshly covered pit was also noticed nearby and from that pit a blood stained shirt was found. In the pocket of that shirt a letter was found sent by one Ghulam Qadir of village Nanga to his son Anwardin in Jammu. It was stated in the letter that the letter was being sent by the hand of Ibrahim of village Nanga. This shirt was identified by Ibrahim's father Pir Moh'd to be that of Ibrahim. The police started investigation and in connection with that investigation the present accused Santokhsingh appeared before the police on 4th *Baisakh* 1993, soonafter his arrival, Santokhsingh made a clean breast of the whole affair before the police and stated how Ibrahim had been murdered by him and Babusingh at the instance of Chhajushah and how the dead body was cut to pieces and these pieces were burried in pits near Basanter nalla. On the same day the pieces of Ibrahim's dead body were recovered from the pits near the Basenter nalla at the instance of Santokhsingh accused and the karpan, kahi and toka were also recovered. The kahi was recovered from Santokhsingh's field while the karpan was recovered on the information supplied by Santokhsingh from a manure heap near the village. The toka was produced by Babusingh's brother Jagatsingh. The post mortem examination of the dead body was conducted on 5th *Baisakh* 1993.

On 20th *Baisakh* 1993 the confession of Santokhsingh accused was recorded by the Munsiff Magistrate Jammu under section 164 of the Code of Criminal Procedure and in that confession the accused stated all the facts of the occurrence as have been given above. On 21st *Baisakh* 1993 a tender of pardon was made to Santokh Singh accused and again on that day he made a detailed statement of the whole occurrence before the Sub-Judge Magistrate Jammu. In this statement also the accused stated as to how a conspiracy was made to kill Ibrahim at the instance of Chhaju Shah and how Ibrahim was killed by him and Babusingh on the night of 30th *Chet* 1992 at a place called Jhungi. Santokhsingh thus became an approver and Chhaju Shah and Babusingh were placed on their trial. During the course of that trial the present accused Santokhsingh was examined by the Munsiff Magistrate Samba on 31st *Har* 1993 and in that statement he totally retracted from his previous confession and stated that he knew absolutely nothing as to how Ibrahim met his death. On the basis of this statement made by Santokhsingh Chhaju Shah and Babusingh were acquitted but proceedings were started against Santokhsingh. A proper enquiry was made as required by section 339-A of the Code of Criminal Procedure and Santokhsingh was found to have forfeited his pardon. He was tried for murder and has been convicted and sentenced as stated above.

It is admitted by the appellants learned counsel that Ibrahim was murdered but his contention is that he was probably murdered by somebody else and Santokhsingh was falsely implicated in the case on account of his enmity with two persons Shahu and Shahna. But this contention is not tenable as no enmity of the accused person with Shahu and Shahna has been established by any evidence.

It is urged by the appellant's learned counsel that in the absence of independent corroboration the accused should not be convicted on the basis of his own confession which was subsequently retracted. This contention also is not correct. In the first place the accused can be legally convicted on the basis of his own confession provided it was found that that confession was made by him voluntarily of his own free will and accord. This view is supported by *1935 Oudh 354* and *1934 Lahore 89*. In *1935 Oudh 354* it was held that when a grown up man in the full possession of his senses chooses to confess his crime

then he can be legally convicted on his own confession even if it be subsequently retracted. Similarly in *1934 Lahore 89* it was held that if it be established that the confession is a voluntary one and was not given under the influence of any inducement or promise so as to make it inadmissible under section 24 of the Evidence Act, then legally the conviction could be sustained solely on this confession. In the present case there can be no doubt that the confession as made by the accused was absolutely voluntary. The accused appeared before the police on 4th *Baisakh* 1993 and shortly after his coming the accused made a confession of the whole affair. There was no time for the police to exert any pressure on the accused. Besides that the accused made two statements before two different Magistrates firstly before the Munsiff Magistrate on 20th *Baisakh* 1993 and secondly on 21st *Baisakh* 1993 before the Sub-Judge Magistrate Jammu. In both these statements the accused made a confession of his guilt and described the manner in which Ibrahim deceased had been done to death. The Sub-Judge Magistrate Jammu who recorded the statement of the accused on 21st *Baisakh* 1993 appeared before the learned Additional Sessions Judge Jammu and it is clear from his evidence that the statement as made by the accused was made of his own free will and accord. So we are fully satisfied that the confession made by the accused was absolutely voluntary. Besides we find that in the present case apart from the voluntary nature of the confession there exists sufficient corroboration of that confession. In the first place there is the recovery of the pieces of dead body from the Basanter nalla at the instance of the accused person. There is the evidence of Karim Bakhsh zaildar and Moh'd Din that the pieces of Ibrahim's body were recovered from the nalla on the information of the accused himself. Besides the recovery of the weapons with which the murder was committed was also made at the instance of the accused person. These recoveries by themselves constitute a very important corroboration of the confession made by the accused person. In the second place there is the evidence of Nashru, Tajdin and Mangtu who saw Babusingh, Ibrahim and Santokhsingh arriving at village Rajwal on the night of 30th *Chet* 1992 and then leaving towards Badral soon after. Santokhsingh mentioned in his confession that when they were going towards Badral they were met by these persons at Rajwal. The learned Additional

Sessions Judge did not attach much importance to the evidence of these witnesses on the ground that they did not report the matter atonce to the police. But in cases of this nature the mentality of ignorant villagers must be taken into account. The villagers are generally shy of reporting any matter to the police as they generally have a wrong notion that if they go to report an occurrence to the police they would be creating trouble for themselves. So we think that the evidence of these witnesses is worthy of consideration and constitute a corroboration of the confession made by the accused person. Then thirdly there is the corroboration afforded by the injury on the forehead of Santokhsingh accused himself. The accused appeared before us and he admitted that a wound had been caused on his forehead but he pleaded that that wound was caused to him by some body during the police investigation. But there is no evidence on the file to support this plea. The injury was caused on the forehead of Santokhsingh and the existence of this injury corroborates the confession of the accused. In his confession the accused stated that the wound of his forehead was caused by Ibrahim with Babusingh's toka before Ibrahim staggered and fell down. So we think that in the first place the confession as made by Santokhsingh is of a voluntary nature and secondly that sufficient corroboration of that confession exists on the file.

It is also urged on behalf of the appellant that the confession of the accused person should not be accepted as correct as a portion of that confession has been found to be wrong. The learned counsel for the appellant referred us to that part of the confession in which the accused stated that the head of the dead body had been cut off on the second day of murder. According to the Medical officer who conducted the post mortem examination the head was cut off while the victim was still alive or cut off immediately after the death. The post mortem examination of the pieces of the dead body was conducted several days after the commission of the murder and so it is possible that the medical officer might not have been able to express a very accurate opinion. Besides this it is immaterial in the present case as to whether the head was cut off the body immediately after the murder or some time after the murder. The fact remains that the head was cut off the body and when the recovery of the body was made on the information given by the accused the head was actually found cut off the body and burried in a separate pit.

Besides if there is any portion of the statement which is not found to be quite correct it is not necessary that the whole confession should be rejected. The portion which is found to be false should be rejected. It was held in *A. I. R. 1934 Oudh 222* that the entire confession of the accused need not be rejected because a part of it has been found to be false.

We have carefully examined the record and we are fully convinced that the accused has been rightly convicted for an offence of murder under section 302 of the Ranbir Penal Code. The conviction of the accused under section 302 of the Ranbir Penal Code is therefore upheld. The appeal filed by the accused is dismissed.

The record of the case shall be submitted to His Highness the Maharaja Bahadur with the humble request that the sentence of life imprisonment awarded to accused Santokh-singh be confirmed.

---

39 P. L. R., J. & K., 164.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu.

MESSRS. KAPOOR & CO. *versus* AGHA ZAFFAR ALI.

THROUGH CHANAN RAM

Civil Revision No. 7 of 1994.

Srinagar, 1st *Sawan* 1994.

When a judgment-debtor applies under Clause (2) of rule 2 of Order 21, the executing court is bound to issue a notice to the decree-holder to show cause why the payment or adjustment should not be recorded as certified.

Application for revision of the order of Judge Small Causes Court, Srinagar, dated 26th *Chet* 1992.

Mr. Sansar Chand, for the Applicant.

JUDGMENT.

The non-applicant has been served but is not present, proceedings against him shall be exparte.

The applicant obtained a decree against the non-applicant and applied for the execution thereof. The judgment-debtor produced certain receipts in the court executing the decree and the court without taking down the statement of the other party or without giving the decree-holder an opportunity to show cause why the payment should not be recorded as certified recorded the same. The decree-holder has come up in revision against that order.

It has been urged by the counsel for the applicant that under Order 21, rule 2, clause (2), the executing court was bound to issue a notice to the decree-holder before recording the payment. There is a good deal of force in this contention. When a judgment-debtor applies under clause (2) of rule 2 of order 21, the executing court is bound to issue a notice to the decree-holder to show cause why the payment or adjustment should not be recorded as certified. In the present case, no notice appears to have been issued to the decree-holder and the executing court was not right in allowing the alleged payment without requiring the judgment-debtor to prove the same. Under these circumstances the order passed by the court below is not correct and is hereby set aside. The revision application is accordingly accepted and the case sent back to the court concerned with the direction that a notice shall be issued to the decree-holder to show cause why the payment alleged to have been made by the judgment-debtor should not be recorded as certified. Costs shall abide the result.

Application accepted.

---

39 P. L. R., J. & K., 165.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. B. Abdul Qayoom, Chief Justice,
and Mr. Justice K. L. Kichlu.

FATEH ALI AND OTHERS *versus* JEWAN AND HAYAT.

Civil Second Appeal No. 71 of 1993.

Jammu, 14th *Baisakh* 1994.

When the existence of a specific custom is alleged by the plaintiff in the plaint and the fact is not denied by the defendant in his written statement, it will be supposed that the existence of the custom is admitted by the defendant.

Appeal against the order of District Judge, Jammu, dated 25th *Maghar* 1993.

Mr. Ladhasingh.

Mr. Harbans Bhagat.

JUDGMENT.

On 28th *Bhadon* 1989 a childless Gujar of the name of Ramzan executed a sale-deed in favour of the defendants in respect of 64 kanals and 5 marlas of land and the amount of consideration shown in the sale deed was Rs. 1500. Shortly after the execution of the document Ramzan died and the vendees had therefore to apply for compulsory registration

of the document. The plaintiffs, who are the collaterals of Ramzan, instituted the present suit for a declaration that the sale as effected by Ramzan was invalid and would not affect their reversionary interests in the land. The plaintiffs' claim was that the parties were governed by the agricultural custom by which a childless Gujar could not alienate his landed property without legal necessity. It was urged that in the present case the sale was absolutely without consideration and without legal necessity and that the alienation was secured under undue influence. The defendants pleaded that the sale was for legal necessity and was for full consideration and that it would not be challenged by the plaintiffs. The trial court found that the transaction was without consideration and without legal necessity and decreed the plaintiffs' suit. On appeal the learned District Judge of Jammu found that the consideration was proved up to the limit of Rs. 400 and therefore modified the decree of the trial court to this extent that the plaintiffs could retain the possession of the land in dispute on the payment of Rs. 400 to the defendants. Against this order the present appeal has been filed by the plaintiffs while cross-objections have been filed by the defendants. The plaintiffs want that the condition of the payment of Rs. 400 should be removed while the object of the cross-objections is that the plaintiffs should be made liable to pay the entire amount of Rs. 1500 to the defendants. This judgment will govern the decision of the appeal as well as of the cross-objections.

The defendants did not deny in their written statement the plaintiffs' allegation that the parties were governed by custom and not by their personal law. The only dispute between the parties was as to whether the transfer was for legal necessity and if so how much consideration actually passed in connection with the transaction. The defendants claimed to have paid a sum of Rs. 1500 to Ramzan Rs. 800 to meet his marriage expenses, Rs. 300 for purchase of bullocks, Rs. 200 spent during Ramzan's illness and Rs. 200 spent in connection with Ramzan's death ceremonies. There is no satisfactory evidence in regard to the alleged payments of items 1 and 2 *i. e.* 800 and Rs. 300. One Sadre Shah was produced to prove the payment of Rs. 800 but his evidence was of a very unsatisfactory nature. So we think that items Nos. 1 and 2 have been rightly disallowed by both the courts. As regards the remaining item of Rs. 400 it is clear from the

evidence of some of the plaintiffs' own witnesses that Ramzan was ill for about six months and that he died in the house of defendants and that his death expenses were incurred by the defendants. The plaintiffs have now come forward to challenge the alienation made by Ramzan but they could not show that they did anything to help him during his illness. It is clear from the record that Ramzan was in a helpless condition during his illness and that he was looked after by the defendants. It is difficult in such cases to produce very accurate accounts of expenses incurred but we think that the amounts allowed by the lower appellate court for expenses during the illness and expenses after the death of Ramzan are reasonable. We see no reason to interfere in the order of the lower court. Both the appeal and the cross-objections are dismissed with costs.

Appeal dismissed.

---

39 P. L. R., J. & K., 167.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu and Mr. Justice J. N. Wazir.

BANK OF NORTHERN INDIA *versus* L. BHAGAT RAM LTD., RAWALPINDI, AND OTHERS.

Civil First Appeal No. 4 of 1993.

Srinagar, 23rd *Assuj* 1994.

In order to create a valid charge the charge must conform to the law of the country where the immovable property to be affected by the charge is situate.

An equitable mortgage cannot be created with regard to the property situate in the State as equitable mortgage is not known in the State.

Appeal against the order of Senior Subordinate Judge, Srinagar, dated 8th *Sawan* 1993.

Mr. A. R. Oswal, Advocate.

Mr. Sunderlal, Advocate.

JUDGMENT.

The facts of this litigation out of which this appeal has arisen briefly are that the Bank of Northern India Limited, obtained a decree for Rs. 13,295 against Bhagat Ram, Raj Kumar and Krishen Kumar defendants on the basis of a mortgage deed executed by the father of the defendants in favour of plaintiff Bank. The father of the defendants had mortgaged certain property situate in Srinagar by deposit of title deeds with the Bank. The decree in favour of the

Northern Bank was transferred to the court of District Judge Srinagar for execution. There was another decree in favour of the Punjab and Kashmir Bank against Bhagat Ram and others passed by a Srinagar Court, in execution of which a house belonging to them was sold and purchased by Bhagat Ram plaintiff respondent. In the execution application of the Northern Bank against Bhagat Ram and others judgment-debtors pending in the court of the District Judge, Bhagat Ram auction purchaser raised certain objections which were disallowed by the executing court. He preferred a declaratory suit in the court of Senior Subordinate Judge Srinagar seeking declaration to the effect that the Rawalpindi Court had no jurisdiction to adjudicate with regard to the property situate outside its jurisdiction and thereby create valid charge on such property, that he had no knowledge with regard to a decree which the Bank had in its favour against Bhagat Ram and others judgment-debtors, that he was a *bona fide* auction purchaser of the property which was sold in execution of another decree against the judgment-debtor and that the property which he has purchased is free from any encumbrance or charge. The defendant Bank contested the suit of the plaintiff. The trial court after considering the evidence of the parties came to the conclusion that the court at Rawalpindi could not create a charge on the property situate at Srinagar contrary to the regulations prevailing in the Kashmir State and therefore passed a decree in favour of the plaintiff declaring that the plaintiff purchased the house in the court auction sale free from any encumbrance created by the Senior Subordinate Judge at Rawalpindi and that such a charge as created by the Senior Subordinate Judge Rawalpindi cannot be enforced in the State. The defendant Bank has filed this appeal against the judgment of the Senior Subordinate Judge Srinagar.

In this appeal it has been urged on behalf of the appellant Bank that the plaintiff was the auction-purchaser and therefore a representative in interest of the judgment-debtors. Any charge created on the property of the judgment-debtors would be binding on the plaintiff. The charge was created by the judgment of the Senior Subordinate Judge at Rawalpindi; Bhagat Ram and others judgment-debtors had raised an objection before the Senior Subordinate Judge that the court at Rawalpindi had no jurisdiction to adjudicate upon the property situate in Srinagar but this objection of the judg-

ment-debtors was disallowed and the judgment-debtors did not appeal against the decree of the Senior Subordinate Judge Rawalpindi.

They were bound by the findings of the Senior Subordinate Judge Rawalpindi and those findings would be binding upon the auction-purchaser who was a representative in interest of the judgment-debtors. It has been further urged that the learned Subordinate Judge was wrong in holding that the charge created by the Rawalpindi Court would not be enforceable in the State.

In support of the first point raised by the appellants counsel reliance was placed upon *1937 Calcutta page 129* in which it has been held that "the position of a purchaser at an execution sale is the same as that of judgment-debtor. The execution purchaser purchases the property subject to all the charges and encumbrances, legal and equitable which would bind the debtors. Notice is not therefore necessary in the case of auction-purchaser at an execution sale, in order to bind him with all the charges and encumbrances standing against the judgment-debtor at the date of auction sale." The point to be considered in this particular case is whether the charge created on the property purchased by the auction-purchaser was a valid charge and therefore binding on the auction-purchaser. The Senior Subordinate Judge Rawalpindi decreed the claim of the Northern Bank against Bhagat Ram and others judgment-debtors and thereby created a charge on the property situate at Srinagar. The judgment-debtors had raised the point of jurisdiction before the court at Rawalpindi and that objection was disallowed as pointed out before. The auction-purchaser who was a representative of the judgment-debtors was entitled to question the judgment of the Senior Subordinate Judge Rawalpindi in the court at Srinagar on the point of jurisdiction. The finding of the court at Rawalpindi with regard to jurisdiction would not prevent the auction purchaser from raising that point in a subsequent proceeding at Srinagar. In this view we are supported by an authority *1936 Calcutta page 138* in which it is held that an order by a court which has no jurisdiction to deal with the subject matter of the suit has no binding effect on the person who is effected by the order. It is absolutely void. It is open in a collateral proceeding to impeach even the judgment of a court on the ground of want of jurisdiction. The counsel for the appellant urged

that the father of Bhagat Ram and others judgment-debtors while executing the mortgage deed at Rawalpindi in favour of Northern Bank had created equitable mortgage with regard to the property situate in Srinagar thereby he intended that the law of the place where the contract was entered into would govern the transaction. But this intention cannot in any way be gathered from the mortgage deed itself. If the Northern Bank wanted to enforce the charge on the property situate in Srinagar it could not be so as equitable mortgage is not known in the State. Our attention was drawn by the counsel for the respondent to the law of transfer in British India by Sir Hari Singh Gour, 6th edition, second volume, page 1421. It is laid down there that in order to be valid, a charge must conform to the law of the country where the immovable property to be effected is situate, it follows that if for want of registration or any other defect the charge fails of its effect it cannot be enforced against a subsequent transferee even with notice. The equitable mortgage created at Rawalpindi by the father of the judgment-debtors in favour of the Northern Bank was not a valid transaction according to law prevalent in the State. Therefore the Senior subordinate Judge at Rawalpindi could not validly create a charge on the property situate in Srinagar. The trial court has rightly held that the charge thus created could be enforced in the State and therefore the plaintiff respondent was entitled to the declaration as granted by the trial court. The counsel for the appellants has not made out any adequate ground which justifies our interference with the finding of the trial court. This appeal is accordingly dismissed but in view of the peculiar circumstances of the case we leave the parties to bear their own costs in this court.

Appeal dismissed.

———

39 P. L. R., J. & K., 171.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu.

KOTHI SURAJ BAT & SONS *versus* MUKHTAR SHAH AND THROUGH NIRANJAN NATH OTHERS

Civil Revision No. 111 of 1994.

Srinagar, 5th *Assuj* 1994.

Where subsequent to a decree the parties by a compromise, agree that the decree will be payable by instalments and as such the only alteration made is with regard to the mode of payment, the agreement does not amount to a novation of the contract.

Revision against the order of Senior Sub-Judge, Srinagar, dated 20th *Chet* 1993.

Mr. Nand Lal, for Applicant.

Mr. Abdul Ahed, for Non-applicants.

JUDGMENT.

The only point for decision in this revision application is whether there has been a novation of contract. Both the lower courts have held that the compromise entered into between the parties subsequent to the decree amounted to a novation of contract and that the original decree cannot be executed. It has been urged by the learned counsel for the applicant that all that was agreed upon between the parties subsequent to the passing of the decree was that the amount of the decree would be payable by instalments. He accordingly urges that this was simply a mode of payment of the decretal amount and that it cannot be treated as an adjustment extinguishing the decree being executed. I see a good deal of force in this contention. By the compromise all that was agreed upon was that the decree will be payable by instalments and as such the only alteration made was in regard to the mode of payment. No third person was introduced and no new conditions were agreed upon. The learned counsel for the non-applicants has cited a ruling of the Judicial Commissioner's Court of Peshawar reported as *A. I. R. 1933 Peshawar 53*. That ruling, however, cannot apply to the present case, as the circumstances of that case were clearly distinguishable from those of the present case. In that case

the judgment-debtor undertook to pay interest on the decretal amount a condition which did not exist in the decree. Moreover a person also stood surety for payment of the decretal amount and agreement of payment of instalments was entered between the decree-holder and the surety. In the present case in the decree itself future interest was allowed and as stated above the only alteration made by the compromise was in regard to its payment. I am not inclined to agree with the finding of the Courts below that the agreement entered into between the parties subsequent to the decree amounted to a novation of contract and that the same cannot be enforced by process of execution. Under these circumstances the order of the lower courts cannot be upheld. The revision application is accepted and the order set aside. I shall, however, leave the parties to bear their own costs.

Application accepted.

---

39 P. L. R., J. & K., 172.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

Before Mr. Justice K. L. Kichlu.

INDER SINGH *versus* STATE.

Criminal Revision No. 94 of 1994.

Srinagar, 11th *Bhadon* 1994.

In a case where death appears to have resulted from injuries voluntarily inflicted by the accused, Magistrate ought to be careful not to take upon himself to absolve the accused from the graver charge unless he is quite clear that there is no sufficient evidence to warrant a commitment of the accused to the Court of Session for murder or culpable homicide not amounting to murder.

In a case triable by a Court of Session if a Magistrate finds that a prima facie case is made out against the accused and credible witnesses have given evidence he must commit the accused to the court of Session.

Revision against the order of Additional Sessions Judge, Jammu, dated 1st *Har* 1994.

Mr. Loknath Sharma.
Government Advocate.

JUDGMENT.

The accused applicant was challaned under Section 304 Ranbir Penal Code in the court of Magistrate 1st class Bhimber. The trial Magistrate framed a charge against the accused under section 325 Ranbir Penal Code on revision, however, the learned Additional Sessions Judge of Jammu directed the Magistrate to frame a charge under section 304 Ranbir Penal Code and to commit the accused to the court of Session. This is a revision application against that order.

It has been urged by the learned counsel for the applicant that the learned Sessions Judge has not considered the evidence and has not given sufficient reasons for the finding that it was a case under section 304 and not under section 325 Ranbir Penal Code. He therefore contends that the order of the lower court directing the commitment of the accused for trial in the court of Session was not correct. He submits that even a case under section 304 is triable by a Magistrate invested with powers under section 30 of the Criminal Procedure Code and that the case may be sent to a Magistrate invested with such powers. I, however, see no force in these contentions. In a case where death appears to have resulted from injuries voluntarily inflicted by the accused, Magistrate ought to be careful not to take upon himself to absolve the accused from the graver charge unless he is quite clear that there is no sufficient evidence to warrant a commitment of the accused to the court of Sessions for murder or culpable homicide not amounting to murder. In a case triable by a court of Session if the Magistrate finds that a *prima facie* case is made out against the accused and credible witnesses have given evidence, he must commit the accused to the court of Session. Having regard therefore to the fact that in the present case the Magistrate relying on the evidence of the witnesses produced by the prosecution had framed a charge against the accused, the proper course for him was to commit the accused as has now been directed by the court below. Under these circumstances I see no reason to interfere with the order passed by the learned Sessions Judge. The revision application fails and is dismissed. The applicants' counsel shall be informed of this order.

Petition dismissed.

Title [redacted]

Author [redacted]

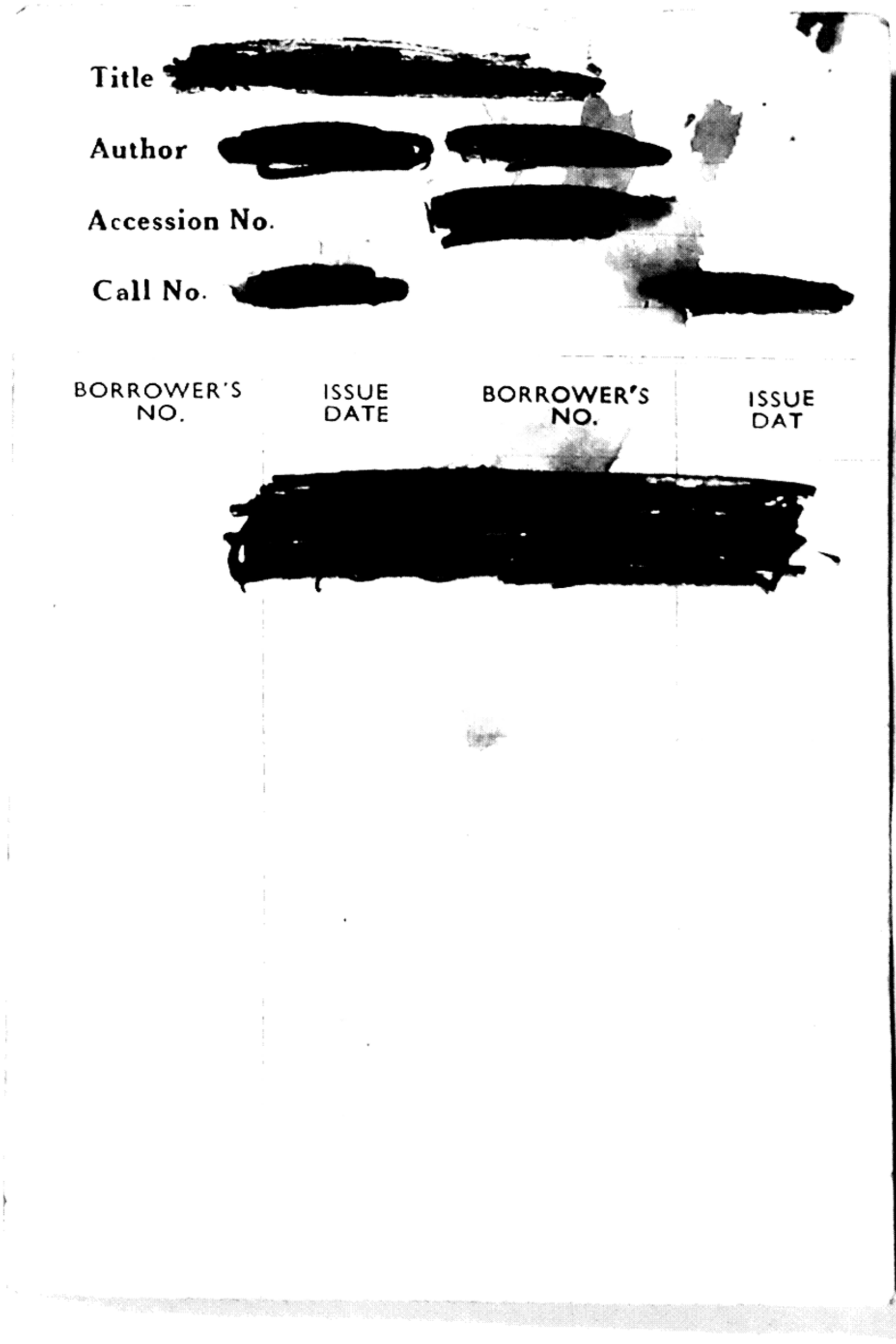
Accession No. [redacted]

Call No. [redacted]

BORROWER'S NO.	ISSUE DATE	BORROWER'S NO.	ISSUE DAT
[redacted]			

Notifications,
Jammu and Kashmir State.

[Pages 1 to 29].



Notifications,
Jammu & Kashmir Govt.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR.
PRIME MINISTER'S OFFICE, GENERAL BRANCH.

Order No. 114-H of 1936.

Judicial Minister's letter No. 47, dated 30th November, 1936, regarding appointment of Mr. Justice Kichlu as Revenue Commissioner.

Judicial Minister's D. O. letter No. 143, dated 9th December 1936 on the same subject.

Whereas it is expedient to amend Clause I of my order dated 26th March 1928 under which the High Court of Judicature was constituted, it is hereby commanded as follows:—

In Clause I of the said Order for the words "one of the Judges shall have revenue experience and shall be styled Judge High Court and Revenue Commissioner", the words "The Chief Justice or the other Judge or any one of the other Judges shall be styled Judge High Court and Revenue Commissioner" shall be substituted.

Dated Jammu, the 12th December 1936.

(Sd.) HARISINGH,
Maharaja, Jammu & Kashmir.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR.
OFFICE OF THE PRIME MINISTER, GENERAL.
BRANCH.

Order No. 115-H of 1936.

Judicial Minister's letter No. 47, dated 30th November 1936, regarding appointment of Mr. Justice Kichlu as Revenue Commissioner.

Judicial Minister's D. O. letter No. 143, dated 9th December 1936, on the same subject.

Mr. Justice K. L. Kichlu who has already been appointed by me to be a Judge of the High Court of Judicature shall be styled "Judge High Court and Revenue Commissioner".

Dated Jammu, the 12th December 1936.

(Sd.) HARISINGH,
Maharaja, Jammu & Kashmir.

Annexure to Council Order No. 21-C of 1937.

Rules for the Inspection of Stamps.

The following instructions for the inspection of stamps are issued by His Highness' Government for the guidance of all offices (other than the Ministers) and courts (other than the High Court) :—

RULES.

1. These rules shall be named "the Rules for the Inspection of Stamps, 1936."

2. The Inspection of stamps shall be done by the Inspector of Stamps who will be assisted in his work by the Supervisor.

3. The Inspector of Stamps shall work under the direct control of the Commissioner of Stamps.

4. The Inspector shall prepare two programmes of Inspection work to be done in a year, one for each province. These programmes shall be approved by the Commissioner before the inspection in a Province is taken up.

5. The Inspection of the less important courts and offices may be entrusted to the Supervisor working independently. The Inspection notes recorded by the Supervisor shall be issued by him on the spot. The office copies of these notes shall be scrutinized immediately after the inspection by the Inspector and objections not approved by him will be withdrawn.

6. As a rule, the Inspectorate shall confine its inspection to files, documents, etc. pending in courts and offices. The following percentage are prescribed for the purpose of test check of different kinds of files.

(*a*) *Civil Courts.*

(*i*) Civil suits..... all files, pending at the time of inspection except those examined at a various inspection.

(*ii*) Execution files. ...30 to 40 per cent. of the pending files.

(*iii*) Criminal files.....30 to 40 per cent of the pending files.

(*b*) *Revenue Courts.*

(*i*) Judicial files.....all pending files.

(*ii*) Cases under the Tenancy and Land Revenue Regulations..... all pending files.

(*iii*) Miscellaneous Revenue files 25 per cent. of the pending files.

(*c*) *Registration Offices.*

(*i*) All pending files ; and

(*ii*) Examination of documents registered in a particular month selected for test audit by the Inspector.

(*d*) *Copying Sections.*

The test check of copying fee stamps shall be conducted centrally at the office of the Inspector of Stamps, Stamps of a particular month selected for test check be obtained along with the relevant record fund statements and discrepancies, if any found settled. These stamps shall be destroyed by the Inspector, after verification, and not returned to the copying sections concerned. A register shall be maintained for record of this branch of work done in the Inspectorate.

(*e*) *Other Offices.*

The scope of Stamp Inspection in other offices will be limited to the examination of documents which require to be stamped under the Stamp and Court Fee Regulation.

7. The offices of Ministers and the High Court.

The stamp inspection of these institutions shall not be conducted by the Stamp Inspectorate.

8. The following procedure of work shall be adopted by the Inspectorate:--

In the course of inspection the Inspectorate shall draw the attention of presiding officers of courts and heads of offices to documents before them which are insufficiently stamped and shall advise them, where necessary, in relation to their powers and obligations as follows:—

(*i*) *Under the Stamp Regulation.*

(*a*) To impound documents under section 33 of the Stamp Regulation.

(*b*) To admit unstamped documents in evidence under section 35 *ibid*; and

(*c*) To advise the Collectors, (if so required) regarding disposal of impounded documents under section 38 and of cases coming before them under sections 39 and 43 of the Stamp Regulation.

(*ii*) *Under the Court Fees Regulation.*

To determine the court fee leviable on any documents. The Inspector shall be at liberty to discuss the point at issue with the presiding officers.

9. Immediately after the completion of the inspection, the Inspection Note shall be prepared and sent to the Court concerned on the spot.

10. The following procedure will govern the disposal of stamp objections :—

(*a*) *Deficiencies pertaining to court fees.*

The final authority to determine the amount of court fee payable on a plaint or appeal in the court under section 12 (i) of the Court Fees Regulation. The decision of a court in this matter cannot be interfered with except when the case comes before the appellate court. Objections relating to court fee duty will therefore be waived automatically if the court disagrees with the views of the Inspectorate. Original files attached with the appeal shall also be examined and deficiencies of court fee as well as of stamp duty shall be brought to the notice of the presiding officer of the appellate court for necessary action.

(*b*) *Deficiencies of stamp duty.*

In case of a difference of opinion between the Stamp Inspector and an officer presiding in a court regarding stamp duty on a particular document the Inspector of Stamps may move the Collector to make an application to the High Court under section 61 of the Stamp Regulation to adjudicate upon the matter, if the question be one of importance.

11. The Inspector Stamps is authorized to write off irrecoverable items of deficiency of stamps (including penalty in the case of stamp duty) not exceeding Re. 1 in each case.

12. The Stamp Inspectorate shall also see that the Stamps used in the files inspected are genuine and have not been removed from files and reused.

13. The verification of stock of stamps at treasuries will continue to be done by the local Audit Department as heretofore.

14. The Inspectorate may also verify the balances of Stamps with licensed stamp vendors, if practicable.

15. The audit of refunds of stamp revenue shall continue to be done by the Accounts office. If necessary the Inspector of stamps will be consulted in cases involving points of Stamp Law.

16. The Inpectorate shall also see that the Stamp Vendors and Petition Writer hold licenses from the Provincial Governors and District Judges respectively in the localities visited. The requisite lists shall be obtained by the Inspectorate from the office concerned.

17. Cases of serious irregularities committed by the Stamp vendors and petition writer detecting during inspections

may be brought to the notice of the licensing authorities by the Inspector for disciplinary action.

18. If necessity arises, the Inspector shall be at liberty to conduct the inspection, on test check basis of the record rooms, but this inspection will only be undertaken in cases when there are grounds for suspicion with regard to illicit use of stamps already used.

19. References meant for the High Court and the Hon'ble Ministers shall be approved and made by the Commissioner of Stamps.

20. The presiding officers of all courts and heads of offices will give the Inspector and Supervisor access to all records, accounts etc; and so far as lies in their power assist them in the performance of their duties.

21. In stamp references before the High Court the Inspector may be asked to appear on behalf of the Stamp Department, but in no other cases.

22. The Inspectorate shall check the accounts of recoveries in pauper suits in the Provincial Governor's offices with special reference to their realization.

23. The Inspector shall submit to the Commissioner of Stamps bi-monthly a report of the work done and at the end of the inspection work in each province a report on the work completed.

24. A report containing a brief account of the work done by the Inspectorate will be submitted to Government in Phagan every year. Lists of outstanding items of the previous year will be prepared at the same time and sent to the controlling officers for expediting their disposal.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR.
OFFICE OF THE PRIME MINISTER,
(GENERAL BRANCH).

Order No. 18/C of 1937.

Subject:—Finance Minister's Memo. No. 240-M, dated 19th November 1936, regarding grant of certificates by the Health Officers to persons receiving training of Sanitary Inspectors.

It is hereby ordered that the following rule be substituted for the existing rule 4 of the Rules for preliminary training of Sanitary Inspectors:—

"4. A certificate will be issued by the Health Officer of the Jammu or Srinagar Municipality, as the case may be, on completion of the training."

By order in Council,
R-XVIII/7-1-1937. (Sd.) E. J. D. COLVIN,
Prime Minister.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR.
FINANCE SECRETARY MUNICIPAL BRANCH.
MEMORANDUM FOR SUBMISSION TO COUNCIL.

Subject.—Preliminary Training for Sanitary Inspectors' Class.

No. 240/M. Dated Srinagar, the 19th November 1936.

In their order No. 747-C of 1936 Council accorded sanction to a set of rules for the preliminary training of candidates desirous of undergoing training in Sanitary Inspectors' class. These rules have been sanctioned for adoption by the Municipalities in the State for purposes of imparting practical preliminary training.

The President Municipal Committee, Jammu, to whom the copy of the above Council order together with the copy of a rules was sent for guidance, has however pointed out that para. 4 of the rules requires to be amended as under :—

"A certificate will be issued by the Health Officer Jammu or Srinagar on completion of the training."

The Finance Minister agrees and solicits sanction.

Submitted to the Hon'ble Prime Minister for orders of Council on the following Regulation :—

"Resolved that sanction be accorded to para. 4 of the rules being amended so as to empower the Health Officer Jammu, as well to issue a certificate of training."

(Sd.) KARTAR SINGH,
Finance Minister.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR.
PRIME MINISTER'S OFFICE, GENERAL BRANCH.

Order No. 61-C of 1937.

Home Minister's Memo. No. 415, dated 23rd December 1936, regarding rules relating to grant of Reward to Police Officials.

The attached rules for the grant of rewards to Police Officers are hereby sanctioned.

By order in Council.
R-X/21-1-1937.

(Sd.) E. J. D. COLVIN,
Prime Minister.

Annexure to Council Order No. 61-C of 1937.

1. The following rules govern the payment of rewards from the grant under this head *viz.* REWARDS in the Police Budget and of rewards offered by private persons, companies, or agencies other than the Police Department.

2. *Classes of persons eligible for rewards.*—Rewards are granted as an encouragement to non-Gazetted officers of the Police department in recognition of meritorious services performed in the course of their duties and should be freely given within the limits hereinafter prescribed. Rewards may also be given to private persons for signal assistance rendered to the Police department. Members of the clerical staff are eligible for rewards only in the same way as private persons. They may not be rewarded for work done by them in the ordinary course of their clerical duties. Gazetted officers are not eligible for rewards of any kind.

3. Rewards are of two classes :—

(*a*) Rewards for definite acts of meritorious service.

(*b*) Rewards proclaimed in advance for a specific object such as the arrest of a criminal or the recovery of stolen property.

4. The following rules govern the grant of rewards of class (*a*) :—

A Senior Superintendent of Police may grant rewards up to a limit of Rs. 25 in any one case on his own authority and up to Rs. 100 with the Inspector General's sanction. The grant of rewards in excess of Rs. 100 within the Budget allotment requires sanction of the Minister-in-Charge.

Rewards may be granted to non-Gazetted officers of the Police department for exceptionally good work done in connection with the investigation of crime, maintenance of law,

order and public safety and for conduct displaying exceptional skill, courage, or merit in any branch of Police activity.

Rewards may not be given for general good work nor for the efficient performance of routine duties but only for exceptionally good work in specific instances.

Rewards given to Inspectors and Sub-Inspectors should not be triffiling it is derogatory to a Sub-Inspector to receive a reward of less than Rs. 10 but the size of rewards should not be mechanically proportioned to salary, and if the main credit belongs to a subordinate he should receive the bulk of reward. If an Inspector or Sub-Inspector's share is clearly a minor one there is no need to reward to him otherwise than by a good entry in his character roll. Any tendency on the part of officers to magnify their own performance at the expense of their subordinates should be watched for and suppressed. Rewards should not ordinarily be given to the prosecuting staff for the successful prosecution of cases except where a case has been peculiarly difficult or complex and the officer concerned has shown exceptional energy or skill in prosecuting it.

5. *Rewards of class* (*b*).—Rewards of class (*b*) may be offered and paid by Senior Superintendent of Police and the Inspector General up to a limit of Rs. 25 and Rs. 100 respectively in any one case on their own authority. For the offer and payment of rewards in excess of Rs. 100 the sanction of the Minister-in-Charge is required. In drafting the proclamation for rewards of this class care must be taken to specify the exact object *eg.*, information leading to arrest and conviction for which the reward is offered and in every case the proclamation shall reserve to the authority making it the right to decide finally by whom the reward has been earned or in what proportion it shall be divided among several claimants provided the conditions of the announcement are in the opinion of the authority making it fulfilled the whole amount of reward offered shall invariably be disbursed.

A reward should not be offered for the capture of a criminal 'dead or alive'.

All offers of reward shall be in force for one year only and at the end of that time the offer shall be reviewed and if considered necessary renewed.

6. *Rewards offered by private persons*.—When rewards are offered by private persons, Companies, or agencies other than the police department the sum offered shall be deposited in the Treasury under head "Police Reward Fund" pending

orders regarding its disbursement. Recommendations for disbursement shall be submitted in all cases to the Inspector General who shall decide whether the reward is admissible under the rules and if so to whom it is to be paid except that in the case of rewards exceeding Rs. 100 this decision shall rest with the Minister-in-Charge. Any portion of the reward which remains undisbursed shall be refunded to the person who offered it.

When a reward of this kind falls under class (*b*) the proclamation shall be issued by the Inspector General, who shall obtain the sanction of the Minister-in-Charge if the amount offered exceeds Rs. 100. No proclamation shall be issued until the amount offered has been deposited in the treasury.

Any person offering a reward shall be clearly told that he will have no say regarding its disbursement.

Officers of the Police department are absolutely prohibited from accepting rewards in any form which may be offered to them by any person otherwise than in the manner prescribed in these rules and in this connection attention is invited to Rule 2 of the Government Servants Conduct Rules.

7. *Rewards for Proclaimed Offenders.*—Rewards of class (*b*) shall be offered and promptly disbursed for the arrest of proclaimed offenders The fullest publicity shall be given to officers of such rewards the amount of which shall be fixed in relation to the importance of each case.

8. *Commendation Certificates :*—The grant of every reward shall be accompanied by the grant of a commendation certificate in form R1 in which the amount of reward granted shall be entered. Commendation certificate may also be granted without the addition of any reward in cases in which it is considered that good work of the nature described above while deserving recognition is not of sufficient merit to deserve a reward.

Whenever an officer of the Police Department receives a commendation certificate an entry to this effect shall be made in his character roll giving brief particulars of the good work done and the amount of reward granted, if any.

Commendation certificates shall be shown at kit inspection no other certificates or testimonials shall be so shown or entered in character rolls.

The acceptance by officers of the Police Department on testimonials from Government officials or members of the public is prohibited.

9. *Rewards rolls.*—All recommendations for rewards or commendation certificates shall be submitted to the Senior Superintendent of Police concerned one reward roll in form R 2 together with the case diaries and other papers connected with the good services rendered. In the case of rewards for the payment of which the sanction of higher authority is required, the reward roll shall be forwarded in original to the Inspector General but the connected papers need not be sent unless they are specially asked for.

10. *Reward register.*—A portion of the grant under head "Rewards" in the Police Budget is placed at the disposal of each Provincial Senior Superintendent of Police who shall maintain a register in form R 3 in which shall be entered all reward debitable to this grant. Column 5 of the register shall be filled in personally by the Senior Superintendent. Amounts sanctioned shall be drawn from time to time on white D. C. Bills and whenever this is done the total expenditure of the year up to date shall be shown in the register together with the available balance in the grant.

———

R 1.

POLICE DEPARTMENT

JAMMU & KASHMIR GOVERNMENT.

———

Commendation Certificate.

.....

.....

.....

Dated————————19 .

Signature of Head of the Office.

Jammu & Kashmir Government.

R. 2

APPLICATION FOR GRANT OF REWARD

S. No.	Name for whom reward is recommended (in the case of Police Officer No. and designation should be given.)	Amount of reward recommended.	Particulars of offence with its date of commission for which reward is recommended.	Value of Property		Particulars of work done for which reward is recommended	Name of person and detail of offence in case the reward is proclaimed by a person other than Department.	Remarks of Officers.
				Stolen	Recovered			

Signature of Head of the Office.

R 3

1	2	3	4	5
S. No.	Police Station and F.I.R. No.	Particulars of good work.	Name of persons rewarded	Amount of reward.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR.
PRIME MINISTER'S OFFICE.
(GENERAL BRANCH.)
Order No. 31-C of 1937.

Home Minister's Memo. No. 763, dated 23-12-1936, regarding Donations offered to State Hospitals.

The attached rules dealing with the donations offered by patients and others to State Hospitals and Dispensaries are hereby sanctioned.

By order in Council.

R-VI/14-1-1937. (Sd.) E. J. D. COLVIN,
Prime Minister.

Annexure to Council Order No. 31-C of 1937.

Draft rules regarding acceptance and utilisation of donations offered by patients to Hospitals and Dispensaries maintained by His Highness' Government Jammu and Kashmir.

1. All donations in cash or kind made to any State Hospital by any person other than a State Guest or guest of His Highness the Maharaja Bahadur will be accepted by the Medical Officer in charge of the Hospital.

2. All such donations will be at once reported to the Director of Medical Services through the Chief Medical Officer of the Province concerned, or direct in the case of Hospitals which are directly under his control.

3. Donations in kind will be at once taken into the appropriated Stock Register.

4. Donations in cash will be at once entered in the Cash Book of the Hospital and a receipt given.

5. The Director of Medical Services will write a letter of thanks to all donors.

6. The Director of Medical Services will have full power to use all cash donations in whatever way he may consider to be of the best advantage to the Hospital receiving such donation. Any wish or desire expressed by a donor will receive all consideration possible.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR.
OFFICE OF THE PRIME MINISTER,
(GENERAL BRANCH).
Order No. 44-C of 1937.

Subject:—Revenue Minister's Memo. No. S-458, dated

21st December 1936, regarding Rules framed under section 17 of the Jammu and Kashmir Aid to Agriculturists & Land Improvement Regulation No. 7 of 1993.

The rules forming an enclosure to this order framed by the Revenue Department under Section 17 of the Jammu and Kashmir Government Aid to Agriculturists and Land Improvement Regulation No. 7 of 1993, is hereby approved.

By order in Council.

R-XIX/14-1-1937. (Sd.) E. J. D. COLVIN,
Prime Minister.

Revenue Minister's Standing Order No. 38 under Jammu and Kashmir Aid to Industries and Land Improvement Regulation No. VII of 1993.

By virtue of the powers vested in the Revenue Minister under Section 17 of the Jammu and Kashmir Government aid to Agriculturists and Land Improvements Regulation (No. VII of 1993), the following rules are, with the approval of the Council issued for the information and guidance of all concerned:—

1. (i) The Provincial Governors and the Frontier Wazir of Ladakh will each year propose in good time before the Expenditure Budget is prepared as to what amount will be required for grant of loans in their districts.

The Revenue Minister will inform Provincial Governors and Frontier Wazir of Ladakh as to what amount is placed at their disposal for loans under the Aid to Agriculturists and Land Improvements Regulation. A Governor may divide the allotment among the Wazarats of his Province and transfer the sum assigned by him from one Wazarat to another.

(2) ***Officers who may grant loans and allotment and provision of funds.*** – Within the limits of the funds allotted to them the following officers are empowered to grant loans:—

(*a*) For improvement of land and other purposes mentioned in section 4 (i) of the Regulation:—

Wazirs Wazarat upto	...	Rs. 500
Governors upto	...	Rs. 1000
Revenue Minister upto	...	Rs. 5000

For grant of loans exceeding Rs. 5000 sanction of the Council is necessary.

(*b*) For relief of distress

	For purchase of seed or fodder	For purchase of cattle or other articles of husbandry.
Naib Tahsildar incharge of Sub-divisions and Tahsildars upto	...Rs. 20	Rs. 100
Wazirs Wazarats upto	...Rs. 60	Rs. 300
Governor upto	...Rs. 100	Rs. 500
Revenue Minister upto	...Rs. 200	Rs. 1000

For grant of loans exceeding Rs. 1000 sanction of the Council is necessary.

N. B.—The limits noted under (*a*) and (*b*) above, apply to grants which may be made in each individual case.

2. *Interest.*—(*i*) Interest will be charged at the rate of 6 per cent. p. a. unless the Council has, by special order, sanctioned a lower rate of interest.

(*ii*) On all loans granted at any time between first *Har* and end of *Maghar* in the case of Jammu Province and 1st *Bhadon* to end of *Magh* in the case of Kashmir Province interest for the half year will be charged along with the Rabi instalment next following; and on loans granted between 1st *Poh* and end of *Jeth* in the case of Jammu Province and 1st *Phagan* to end of *Sawan* in the case of Kashmir Province interest for the half year will be charged along with the Kharif instalment next following. Loans repaid during the harvest in which advances were made will be received with interest for six months.

(*iii*) Ordinarily, a penal rate of simple interest not less than 6 per cent. p.a. will be charged on each instalment falling overdue in cases in which the delay exceeds one month. The Revenue Minister may remit or reduce the penal interest if he is satisfied that the failure is due to inability to pay, or that the levy of such interest is likely to cause hardship. Compound interest will in no case be charged and no penal interest will be charged on instalments which have been suspended by order of a competent authority.

3. *Security.*—(*a*) When the value of the applicant's interest in the land to be improved or in respect of which relief for distress is applied for is sufficient to cover the loan, and the land is unencumbered with any liability or charge, no collateral security will be required.

(*b*) When a loan is made to the members of a village community, or to a society registered under the Jammu and

Kashmir Co-operative Societies Regulation of 1993 who bind themselves jointly and severally as provided in section 1 of the Jammu and Kashmir Aid to Agriculturists' and Land Improvement Regulation (No. VII of 1993) the personal security of the applicants may be accepted. In the case of an application for grant of loan to the members of a village community it is necessary that such application should be made by at least seven members.

(*c*) In all cases not covered by clause (*a*) or clause (*b*) of this rule, collateral security should be required. It should be desirable to have landed security in such case.

4. *Procedure for dealing with applications; and maintenance of accounts.*—(*a*) Every application for the grant of loan should state clearly the nature of improvement or improvments proposed to be made, facilities available therefor the total estimated cost of the undertaking, and the particulars of the area that will be made available thereby for improved cultivation, the period during which the work for which the loan is required will be completed and in case of relief of distress, the nature and extent of calamity, the extent of relief sought, and the Khasra numbers of the plots concerned.

(*b*) In the case of improvements, the application, if in writing should be made as nearly as possible in form A, if orally, it should be recorded in that form. All officers authorised to receive applications should have a supply of printed forms with them and furnish them to the applicants free of cost. The officer receiving the application should either make an enquiry himself or cause one to be made, for the purpose of ascertaining the particulars mentioned on the reverse of Form A. The local enquiry should cover all the heads given on the reverse of Form A, and the report made should deal with each head specifically. It is important that there should be no delay in disposing of cases and the applicant should not be made to appear unnecessarily at the Head quarters of the officers concerned.

In cases where applicants want to introduce modern impliments and improved methods of agriculture, the Director of Agriculture or his nominee who should be of Gazetted rank will scrutinize the applications and make recommendations to the Wazir Wazarat of the District.

N. B.—The grant of an inadequate sum defeats the object of the Regulation and is very likely to lead to the misapplication of the loan. It is better to refuse an advance outright than to make one which is not sufficient to ensure the completion of the projected work or to serve the purpose for which it is applied.

A Revenue Officer empowered to grant loan under rule I above, shall, subject to the provisions laid down in Sections 4, 5 and 7 of the Regulation grant or refuse the request. Before giving decision he should consult officers of technical Departments on technical points, if any, involved in the request for grant of loans.

(*c*) In cases of relief of distress, the officer to whom the application is presented, should dispose of it at once if he is competent to do so; if not, he should forward the application for orders to the competent officer with any report which he may consider necessary. No special form of application for cases of relief of distress is prescribed.

N. B.—The grant of loans should be made easy and vexatious formality avoided as far as possible. When a loan is made or loans are made to several persons, or where numerous applications are made for loans, for the relief of distress, form C should be used for order and agreement. In other cases form B should be used.

(*d*) In considering applications for loans the officer empowered to grant loan will first decide whether the need for loan is established and the security sufficient. He will also determine the period during which the proposed work can be satisfactorily completed, the amount to be advanced, the instalments (if more than one) in which it is to be advanced and the period to be allowed before repayment commences. In deciding these points he should have regard to the circumstances of the borrower and in cases where the loan is required for improvement the character of the improvements and the date on which it will be likely to begin to pay.

N. B.—To save the trouble in calculation it is advisable unless for special reasons, to fix every loan on which interest is to be paid, at some multiple of Rs. 10 or Rs. 25.

(*e*) Officers authorised to sanction applications for loan should carry with them a supply of printed Form B and of printed receipt forms which together with the application (if presented in writing) will be all that are necessary to complete the file.

(*f*) The Officer when granting the loan, should require the borrower to sign on the order of payment an agreement in the form prescribed for the purpose (Form B or C) to pay so many instalments of so many rupees and annas every year (or six months) and should give to the borrower a copy of this agreement. No details regarding principal and interest should be entered in the agreement. Payment to the borrower should ordinarily be made on presentation at the Tahsil of a

payment order in Treasury account form No... .....It is not necessary for him to present form B at the Tahsil.

When a loan is advanced in instalments, form, B or C as the case may be, should be prepared at the time the first instalment is advanced. In such a case the acknowledgement in form B or C should be confined to the amount of the first instalment supplementary acknowledgements being endorsed on the form from time to time as further instalments are advanced.

The interest which has already fallen due on the earlier instalments should be deducted from the amount of the last instalment at the time when this is paid to the borrower.

When an order of payment has been made on the file by the officer disposing of the case, the Revenue Accountant should where form B is to be used, prepare immediately four copies of that form and get them signed at once by the officer and by the applicants; and his sureties, if they are present. One copy is to be given to the applicant, one is to be placed on the file, which will be sent to the Wazarat office, and eventually after being entered in the register of files, to the record room; and one will be placed in the village Basta in the Tehsil. One copy will be sent to the Accounts office.

Where immoveable property has been hypothecated to Government as security, two additional copies of form B must be prepared, one for the Patwari and one for the Sub-Registrar of the Circle in which the land is situated.

When form C is used, the officer recommending the grant will fill in columns 1, 2, 3, 7 and 8. The Officer disposing of the case, after making in red ink any alterations that he may think fit, will sign it in token of sanction. On payment to the borrower columns 4, 5 and 6 will be filled in. When the form is complete it will be sent to the Tahsil.

(g) Detailed accounts of advances made and recoveries effected will be maintained on proper registers by the Wazirs Wazarat in respect of the various Tehsils under them and by the Tehsildars in respect of advances disbursed by them. The Wazir Wazarat will allot a certain number of pages in his register for each Tehsil separately. Both the Wazarat and Tehsil Accountant will fill in the columns in their registers in accordance with the certificates of advances and keep them up-to-date when any instalments in payment of the loans are received. They should scrutinise the repayments from time to time ensure that the instalments are being regularly paid.

(*h*) All decisions granting or refusing a loan under this Rule shall be appealable in the ordinary course under the provisions of the Jammu and Kashmir Land Revenue Regulation No. 1 of S. 1980.

5. ***Dates of payment of instalments.***—The dates for payment of instalments should usually be the dates fixed for the payment at each harvest of the first instalment of the land revenue.

6. *Inspection of works and accounts.*—(*a*) All works for which advances are inade by instalments, should be inspected and reported on before each instalment subsequent to the first is paid; and in the case of such works, no instalment subsequent to the first should be paid until a competent officer is satisfied that the loan is being properly applied. It is the duty of the local Revenue officers to see that works undertaken with the aid of the loans granted under this Regulation are completed within the fixed time.

(*b*) If a proposed work is not completed within the fixed time the sanctioning authority may, if deemed expedient, extend the period or order for the recovery of the loan all at once irrespective of instalments originally specified in the certificate.

(*c*) If the grantee utilizes the loan for purposes other than those specified in the agreement, or fails to comply with the provisions of these rules. or does not maintain proper accounts, or if so required fails to produce them before an authority competent to inspect them, and the authority granting the loans is of opinion that the loan should be recovered atonce such authority may, after giving due notice to the grantee, proceed to recover the loan.

7. *Suspension.*—Instalments may be suspended by order and at the discretion of the Governor on proof of failure of crops other exceptional calamity upto Rs. 10,000 in individual cases. The Governor should report the suspension to the Revenue Minister, who should satisfy himself as to the propriety of the action taken and may, if necessary, cancel or modify the Governor's order. The Revenue Minister may suspend instalments without limit, submitting a report for the information of the Council. In all cases formal orders of suspension should be recorded.

8. ***Remission.***—When any portion of loan under these rules is found to be irrecoverable, or when from any special cause it appears that the loan ought not be recovered, a special report should be made to the Revenue Minister who should

consult the Finance Department and forward the report to the Council for sanction of remission.

9. *Exemption of improvements for assessment.*—(1) When a masonry wall is constructed for the purpose of irrigation at private expense or with the aid of loan from Government, the land which benefits from the well shall be entitled to exemption from that part of the assessment which is due to the existence of the well for a period of twenty years from the date on which the well was first brought into use.

Provided that when the well is constructed to irrigate land already assessed at irrigated rates, the period may be shortened, if, in the opinion of the Officer granting the exemption, the amount of expense incurred is not sufficient to require exemption for the full period of twenty years.

When an existing well is repaired for the purpose of irrigation, a similar exemption may be given for a period not exceeding ten years, to be fixed by the officer granting the exemption with reference to the amount of the expenditure incurred in repairing the well.

The period of exemption in above cases, if less than the maximum should be so fixed as to allow the owner a reasonable return on his expenditure before that part of the assessment which is due to the well, becomes realizable. In special cases of the nature mentioned above, the council may sanction the grant of exemption from assessment for a longer period than is allowed by the above rules.

No exemption shall be granted for unlined wells which cost little and are not permanent; but wells which though only partially lined with stone or brick, are expensive to make and last for some years may be granted an exemption for a period not exceeding ten years, provided that the total amount granted does not exceed the cost of the work.

(2) The extent of the exemption, to be granted under subsection (*i*) above, shall be so determined that during the period of exemption, the land irrigated by the well shall be assessed at the amount at which it would have been assessed had there been no well at all, and no fixed lump assessment shall be imposed on the well itself during that period.

(3) Similar exemption should be granted for other irrigation works subject to the following maximum periods:—

For expensive canals, permanent dams, or reservoirs:—

If new, twenty years,

If repaired, ten years.

For canal distributaries or cuts from rivers and lakes, five years.

For masonry Jhallarrs, five years, provided that the total amount remitted by the exemption shall not exceed the cost of the work.

(4) When land is reclaimed from waste with the aid of a loan granted by Government, and is thereby brought under cultivation the increase in value derived from the improvement shall be reckoned from the beginning of the harvest first reaped after such reclamation was effected.

(5) In tracts where there is practically no assessment on land in its unirrigated aspect the whole fixed assessment on well lands lying beyond the reach of river floods or canal water *i. e. chahi khalis* lands, shall be remitted during the period of exemption. In the case of *chahi sailaba* and *chahi nehri* lands the rate of assessment fixed by the protective lease shall be as follows: —

(*a*) where the land in which the well is situated is within the reach of river floods, the *sailab* rate.

(*b*) where it is within reach of canal water, the *nahri khalis* rate.

A difficulty may arise in the rare cases in which an assignee of the land revenue collects in kind from the improving landowner. In such cases, the Batai and Zabti rates may be modified for the term of the protective lease to the extent that seems fair, and if the *Ilakadar*, *Jagirdar* or *Muafidar* refuses a reasonable compromise of this kind, a cash assessment at unirrigated rates, may be substituted for payment in kind.

10. *Grant of exemption certificates at Settlement.*— When making a revision of assessment the Settlement Officer should institute an enquiry as to what wells and other irrigation works are entitled to exemption under these rules whether the owners apply for the exemption or not. This is one of these miscellaneous matters which may conveniently be disposed of early in the Settlement. In the course of any visit which he pays to a village, the Settlement Tehsildar can ascertain which are the works in respect of which any claim for exemption can be set up and make the simple enquiry which such a claim involves. All the cases in the estate should be included in a single file in the form of a register. Any exemption granted before Settlement, the terms of which will not expire before the new assessment is introduced, should be included in the same

statement, which should then be submitted to the Settlement Officer for orders. It will prove embarrassing if final orders as to all such exemptions have not been passed before the distribution of the revenue over holding is undertaken. The period of protection should end with the agricultural year, the full demand being imposed from the Kharif harvest in the Jammu Province and the Rabi harvest in the Kashmir Province and the Ladakh District. In every case in which the Settlement Officer grants an exemption, he should give the land owner a certificate specifying the well or other work on account of which it is granted, the date of its construction or repair, the term for which the exemption will last the land which would otherwise have been assessed at irrigated rates, and the additional demand to be imposed at the end of the period of exemption or if the land is under the fluctuating assessment, the certificate should state what the effect of the exemption will be under the system as sanctioned for the tract.

11. *Grant of certificates at other times.*—When a well or other irrigation work is constructed or repaired during the currency of a settlement under such conditions as to entitle the owner to an exemption from assessment at irrigated rates, the Revenue Minister should have special enquiry made and grant a certificate of exemption in accordance with the provisions as laid down in rule 10 above if the exemption is to take effect immediately for example when the work is a new well made to irrigate land formerly watered from a well which it has become impossible to repair or is an existing well which has been repaired the certificate should state as nearly as may be all the particulars mentioned in rule 10 and in addition should show distinctly the amount of the existing land revenue to be be remitted, fixed wherever possible, in even rupees. But if the exemption is not to take effect till the next revision of assessment as for instance, where a new well is constructed to irrigate land under fixed assessment not assessed as well irrigated, there is no need to take action unless the owner of well applies for a certificate. In such a case no entry should be made as to the area subject to the concession or the amount of the exemption. These particulars should be filled in by the Settlement Officer at the next reassessment

12. *Annual reports.*—In preparing their Annual Administration Reports the local Revenue Officers should among

other things, briefly review the working of the system. Facts and figures should be given to show to what extent the Agriculturists have availed of the monetary help and relief provided for them by the aid to Agriculturists and Land Improvements Regulation and the Rules made thereunder and which of the Revenue officers deserve special mention by reason of creditable efforts made by them to achieve the objects of the Regulation. Anything that may appeal abnormal as compared with previous years should be explained.

FORM A
FORM OF APPLICATION FOR A LOAN UNDER REGULATION NO. VII OF 1993.

Name, residence, etc. of applicant.	Amount of loan required	Nature of security whether personal or otherwise	Nature of proposed improvement	Description of the land	Applicant's right in land	Proposed period of repayment.

Applicant's signature.

FORM A (Form of application-REVERSE)

Note:—

(1) His Highness Government Jammu and Kashmir will advance money to landlords and tenants for the construction of wells or tanks, embankment of land, recalamation of waste or any works which are or which may be declared by Government to be an improvement for the purposes of the aid to Agriculturists and Land Improvements Regulation (No. VII of 1993).

(2) Application for loan may be made to a Naib Tehsildar or Revenue Officer of higher rank in the above form free of court fees and the loan will be made free of stamp duty and registration fees.

(3) The rate of interest will be 6 per cent. per annum and instalments of repayment will be distributed over a number of years.

(4) The personal security of a body of cultivators will be accepted, or the land itself may be pleged.

(PARTICULARS TO BE FILLED IN BY INSPECTING OFFICER).

(*i*) Mauza, filed number, area and class of land to be improved.

(*ii*) Status of applicant, *i. e.* proprietor or tenant. If a tenant and if the landlord's consent is required, whether the landlord consents.*

(*iii*) Security :—

1. If the land itself, the value of the applicant's interest in it and extent of pre-existing encumberances, if any.

2. If personal the names and status of the co-sureties.

3. If property other than the land itself is offered as security its nature and value and the extent of pre-existing encumbrances, if any.

(*iv*) The improvement :—

1. Its estimated utility and value.

2. Objections if any of third parties.

3. Date on which it will begin to yield profit.

(*v*) Repayment :—

1. Suitable date for first instalment with reference to (*iv*) 3.

2. Proposed instalments and period of the repayment.

(*vi*) Date or dates on which the loan or instalments of it should be received by the applicant.

Recommendation of inspecting officer after verification of the above from the revenue records.

*This statement should be signed by the landlord and his signature should be witnessed.

FORM B.

FORM OF ORDER AND AGREEMENT TO BE USED WHEN A LOAN IS MADE UNDER REGULATION NO. VII OF 1993.

Whereas AB son of Village and CD son of village ~~has~~ **have** (with the consent of EF) applied to Government for a loan under Regulation No. VII of 1993 for the purpose of

It is hereby ordered that a loan of Rs. be granted. The loan will be repaid with interest in equal instalments of Rs. commencing with each instalment being repaid with the first instalment of land revenue interest at 6 per cent. per annum may be charged on overdue instalments not suspended by competent authority.

I (AB) /We (AB&CD) on behalf of myself and my/ourselves and our and each of my/our heirs and legal representatives do hereby bind myself/ourselves and them

and each of them to be personally/jointly responsible to Government for the repayment of the loan. If I make/ any one of us makes, default in the punctual payment of my debt then I/his shares then the others of us, and XV (sureties) are responsible jointly and severally to Government for the payment of it. (Where sureties give personal security).

As between ourselves we the applicants are responsible for the repayment of the loan in the following shares:—

The loan shall be applied solely to the purpose specified above and if it shall be proved to the satisfaction of the Wazir Wazarat that any part of the loan has been misapplied, the whole amount of the loan shall with such interest as may have become due thereon be deemed to become atonce due. Unless the work has been completed by to the satisfaction of a competent officer, the loan shall be held to have been misapplied.

Whereas collateral security for the punctual repayment of the loan according to the terms of the order is demanded from.....I/we mortgage to Government the immoveable property mentioned in the schedule below as a collateral security. (Where immovable property is hypothecated).

(Collateral security)

I/we the undersigned acknowledge the receipt of Rs. borrowed by me/us and hereby agree to the condition of repayment specified above. In witness whereof we have hereunder set out thumb-marks and signatures on the dates specified respectively.

Signature of the officer making the grant.

Signature of applicants & sureties.

No.	Name of applicant or surety.	Amount of loan.	Signatures and thumb marks.	Date of execution

(Where there are sureties their names should be shown as such as along with the name (or names) of the principal, and the word "surety" added).

REVERSE.
Inspection.

Date	Remarks.	Signature of officer.

Repayments.

Date	Amount	Signature of Tehsil Officer.

Orders of suspension.

FORM C.

Form of order and agreement to be used when a loan is made or loans are made to several persons under Regulation No. VII of 1993.

Village

We the undersigned acknowledge to have received from His Highness' Government, Jammu and Kashmir the sums hereunder specified against our names respectively as advance under Regulation No. VII of 1993 and bind ourselves and each of us of each of our heirs and legal representatives severally (or where the word jointly is entered hereunder against the names of any two or more of us, then jointly and severally) to repay the said sum with interest in such number of and such instalments as are specified below, half-yearly, on the date for paying the 1st instalment of land revenue begining from (harvest).

In case of joint loans.	As between ourselves we the applicants are responsible for the repayment of the loan in the following shares.

1	2	3	4	5	6	7	8

REVERSE.
Repayments.

Date	Amount	Signature of Tehsil Officer.

Note :—Where there are sureties they should be shown as such in the same number with the principal, and the word "surety" should be added.

When the loan is taken by two or more persons jointly their shares should be stated.

Columns 1 to 3 will be filled up by the officer, recommending or disburing the loans.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR.
OFFICE OF THE PRIME MINISTER,
(GENERAL BRANCH).
Order No. 86-C of 1937.

Subject.—Finance Minister's Memo No. F-1721, dated 30th December 1936, regarding exemption of instruments relating to Co-operative Societies from payment of Stamp duty and Registration fee.

The exemption of instruments relating to Co-operative Societies from payment of Stamp duty and registration fee, under Section 30 of the Co-operative Societies Regulation of 1993 is hereby sanctioned.

By order in Council.

R-XI/6-2-1937. (Sd.) E. J. D. COLVIN,
Prime Minister.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR.
PRIME MINISTER'S OFFICE
(GENERAL BRANCH).
Order No. 104-C of 1937.

Home Minister's Memo. No. 557, dated 12-1-37, regarding extentions of the Public Gambling Regulation to the towns of Kishtwar and Bhadarwah and other places in the locality.

It is hereby ordered that the provisions of the Public Gambling Regulation No. XVIII of 1977 be extended to the towns of Kishtwar and Bhadarwah and the places noted below :—

Kishtwar

1. Town Area limits of Kishtwar.
2. Tewar and Wasar Kund villages in the East.
3. Haryal and Hatta in the West.
4. Sarkut, Kulid, Sangram Batta, Hatta and Puchyal in the north.
5. Dewan and Loyal in the South of the Town area.

Bhadarwah

1. Town area limits of Bhadarwah.
2. Rainda.
3. Udrana.
4. Catha.
5. Dandi.
6. Sarolbagh.
7. Kotli.
8. Gwari.

By order in Council.

R-V/12-2-1937. (Sd.) E. J. D. COLVIN,
Prime Minister.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR. PRIME MINISTER'S OFFICE, (GENERAL BRANCH).

Order No. 16-H of 1937.

Judicial Minister's Memo. No. 740 dated 5-2-1937 regarding extension of the Agriculturists' Relief Regulation to Frontier Wazarat.

His Highness the Maharaja Bahadur has been pleased to accord sanction to the extension of the provisions of the Agriculturists' Relief Regulation to the Frontier Wazarat as recommended by the Judicial Minister.

By command.

Jammu, 23-2-1937/13-11-1993. (Sd.) E. J. D. COLVIN,
Prime Minister.

No. 5-L/93 dated Jammu the 25-2-1937/15-11-1993.

Published for general information.

(Sd.) RAM NATH SHARMA,
Judicial Secretary.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR. OFFICE OF THE PRIME MINISTER (GENERAL BRANCH.)

Order No. 116-C of 1937.

Subject.—Revenue Minister's Memo. No. S-510, dated 31st December 1936, regarding declaring Muslim Kharar Khatris of Bhimber Tehsil as Agriculturits.

It is hereby ordered that Muslim Kherar Khatris of Bhimber Tehsil be added at the end of the list of agricultural classes for the Mirpur District notified under Section 6 of Alienation of Land Regulation No. 6 of 1990 for the Jammu Province.

By order in Council.
R-XVII/12-2-1937. (Sd.) E. J. D. COLVIN,
Prime Minister.

HIS HIGHNESS' GOVERNMENT, JAMMU & KASHMIR. OFFICE OF THE PRIME MINISTER, (GENERAL BRANCH).

Order No. 108-C of 1937.

Subject —Finance Minister's Memo. No. 2177, dated 12th January 1937, regarding amendment to para. 61 of the Customs and Excise Manual relating to the storage of liquor.

It is hereby ordered that the following amended draft be substituted for existing paragraph 61 printed on page 163 of the Customs and Excise Manual:—

"All rooms for storage of liquor, and lids and corks of vats must be secured with two reliable padlocks approved by the Inspector General, Customs and Excise. The keys of one padlock of the Warehouse will remain with the Warehouse officer and the keys of the other padlock will remain with the office Deputy Inspector in the case of Jammu Warehouse and with the Town Deputy Inspector in the case of the Srinagar Warehouse".

By order in Council.
R. IX/12-2-1937. (Sd.) E. J. D. COLVIN,
Prime Minister.

Order No. 167-C of 1937.

Judicial Minister's Memo. No. 816, dated 12-2-1937, regarding addition of a rule to Part IV of J. & K. Praja Sabha Electoral Regulations.

It is hereby ordered in concurrence with the Judicial Minister that the Rule appearing in the annexure to this order shall be added as Rule 4 to Part IV of the Jammu and Kashmir Praja Sabha Electoral Regulations.

By order in Council.
R-XII/3-3-1937. (Sd.) KHUSRU JUNG,
Prime Minister.

Rule 4 to Part IV of J. & K. Praja Sabha Electoral Regulations

"A person who having been duly elected resigns on account of a cause other than one beyond his control shall not be eligible for re-election except with the previous permission of the Government till the dissolution of the Sabha under Section 18 of Regulation 1 of 1991."

No. 6-L/93 dated Jammu, the 15-3-1937/3-12-1993.
Published for general information.

(Sd.) RAM NATH SHARMA,
Judicial Secretary.

Order No. 790 (A)-C of 1937.

Judicial Minister's Memo. No. 2909 dated 9th September 1937, regarding draft Notification amending the Praja Sabha Electoral Regulations.

The Draft Notification (copy enclosed) amending the Jammu and Kashmir Praja Sabha Electoral Regulations is hereby sanctioned.

By order in Council.

R-XXVI-A/14-9-1937. (Sd.) N. GOPALASWAMI,
Prime Minister.

Annexure to Council Order No. 790-(A). C. of 14-9-1937.

In exercise of the power conferred upon them under Section 15 of Regulation No. 1 of 1991, the Council hereby sanction the following amendments in the Jammu and Kashmir Praja Sabha Electoral Regulation :—

(1) In Part IV of Rule I—

(i) the following be substituted for the existing clause (c):—

Is registered as an elector for that constituency or for any other constituency in the province, and in the case of a Hindu, Mohammedan or a Sikh constituency he is himself a Hindu, a Mohammedan or a Sikh as the case may be;

Explanation :—The Provinces are Jammu and Kashmir and the Jagirs of Poonchh and Chenani are included in the Province of Jammu.

(ii) Clause (d) and the note thereunder shall be deleted,

(2) In Part IV Rule 2 the following be added as proviso to Rule 2 :—

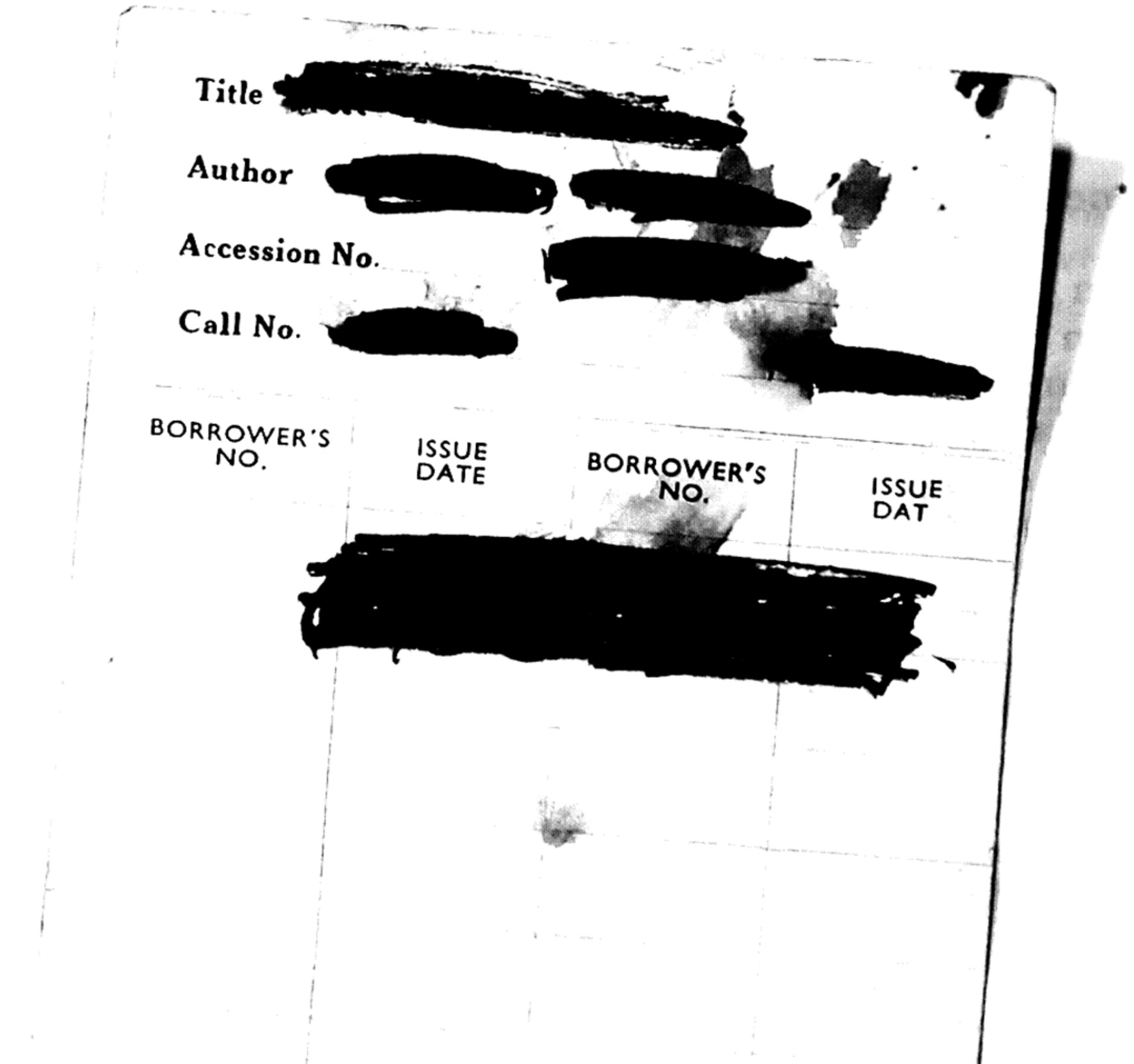
"Provided that on application made by a person disqualified under this rule, the Government may remove the disqualification by order in this behalf."

(3) In Part IV—Rule 4 be deleted.

No. I L/94
Published for general information.

Dated 6-10-1937.

(Sd.) RAM NATH SHARMA
Judicial Secretary.


Title
Author
Accession No.
Call No.
BORROWER'S NO.
ISSUE DATE
BORROWER'S NO.
ISSUE DAT

Statutes,
Jammu and Kashmir State.

[Pages 1 to 18].

INDEX

———

Statutes,
Jammu & Kashmir State.

Amendment to Possession Tax Rules Regulation No. VIII of 1993.

Received the assent of His Highness the Maharaja Bahadur on 26th June 1936.

WHEREAS it is expedient to amend the rules regarding the recovery of possession tax on motor cars and motor cycles published in the Government Gazette dated 9th *Chet* 1990, with a view to provide for the grant of refund of the tax recovered on such vehicles as may be sold or exchanged after recovery of the possession tax due thereon, it is hereby enacted as follows:—

The following shall be added as rule 7 to the Possession Tax Rules:—

"In cases where the owner of a motor cycle after he has paid possession tax due on it sells, transfers or exchanges it or replaces it by a new one, such owner of the vehicle will be granted refund of the amount paid by him after deduction of the amount due for the period for which the vehicle was in his possession provided that :—

(1) The owner informs the Inspector of Customs and Excise concerned that he has sold, transferred or exchanged or replaced his motor vehicle and also intimates to him the date of sale, transfer or exchange made, as the case may be, and the name and the address of the purchaser or new possessor.

(2) The claim for refund is submitted within three days of the sale, transfer or exchange made

This rule will have retrospective effect on pending cases.

The Food Control Amendment Regulation No. IX of 1993.

WHEREAS it is expedient to amend Food Control Regulation No. 1 of 1986 for the purpose hereinafter appearing, it is hereby enacted as follows:—

1. *Short title, extent and commencemnt.*—Section 1. (*a*) This Regulation may be called the Food Control Amendment Regulation No. IX of 1993.

(*b*) It extends to the whole of the Kashmir Province.

(*c*) It shall come into force on publication in the Government Gazette.

2. Section 2. In Section 2 lines 9 and 10:—

The words "fixed with the advice of the Board constituted under the provisions of Section 11 of this Regulation" may be substituted for the words "given in the annexure to this Regulation".

3. In Section 2 lines 13 and 14:—

The words "the Jammu and Kashmir Government" may be substituted for the words "His Highness the Maharaja Bahadur".

4. Section 4. In Section 4:—

The words "at the rates fixed with the advice of the Board constituted under the provisions of Section 11 of this Regulation" may be substituted for the words "at the usual authorised rates of recovery".

5. Section 7. In Section 7, Sub-section 4:—

The figure "1989" be substituted for "1969", after the words "Code of Criminal Procedure".

6. Section 8. In Section 8 para. 1 lines 12 and 13:—

Substitute the words "at the price sanctioned by the Government with the advice of the Board constituted under the provisions of Section 11 of the Regulation. Where Shali or rice or any preparation thereof is commandeered at a place other than a recognized collection centre, the price to be paid shall be the price fixed for the nearest collection centre less nine pies per mile per Kharwar for each mile of the distance from the nearest collection centre," for the words beginning from "at the price detailed" and ending in "was commandeered" and after the words "authorised agents" in line 12.

7. In Section 8, para. 2 lines 3 and 4:—

Substitute the words "sanctioned by the Jammu and Kashmir Government with the advice of the Board constituted under the provisions of Section 11 of this Regulation" for the words "given in the annexure to the Regulation."

8. The following shall be added as Sub-section 3 to Section 8 and the present paras. 1 and 2 shall be numbered as sub-sections 1 and 2:—

"In calculating the price to be paid for rice commandeered under this Regulation, ten traks rice shall be taken as the equivalent of one Kharwar Shali. Shali commandeered within

the Srinagar Municipal area shall be paid for at a rate which shall be rupee one below the rate at which the Kashmir Valley Food Control Department is authorised to sell shali on the date such grain was commandeered."

9. Section 11 shall be renumbered as section 12 and the following shall be added as section 11 :—

"Section 11. *Constitution of the Board.*—There shall be constituted an Advisory Board to suggest to the Government from time to time a schedule of rates regarding the purchase and sale of Shali at different ghats.

The Board shall consist of seven members. The Revenue Minister and the Director Food Control shall be ex-officio members of the Board. The remaining five shall be elected by the Praja Sabha from amongst its non-official members belonging to Kashmir Valley. Three shall be from the rural area and two from the city of Srinagar.

10. The annexure to Regulation 1986 shall be repealed.

(Sd.) BARJOR DALAL,
PRESIDENT,
J. & K. PRAJA SABHA.

Received the assent of His Highness the Maharaja Bahadur on the 17th October 1936, corresponding to 2nd Katik 1993.

(Sd.) E. J. D. COLVIN,
PRIME MINISTER.

JAMMU AND KASHMIR PRAJA SABHA CERTIFICATE.

The above Regulation was passed by the Praja Sabha on 5th October 1936/20th Assuj 1993, received the assent of His Highness the Maharaja Bahadur on 17th October 1936/2nd Katik 1993, and will come into operation on 20th October 1936/5th Katik 1993.

(Sd.) HIRA NAND RAINA,
SECRETARY, J. & K. PRAJA SABHA.

The Matches Excise Duty (Amendment) Regulation No. X of 1993.

WHEREAS it is expedient to amend the Matches Excise Duty Regulation No. IV of 1992, it is hereby enacted as follows :—

1. *Short title and extent.*—(1) This Regulation may be called the Matches Excise Duty Amendment Regulation of 1993.

(2) It extends to the whole of the Jammu and Kashmir State.

2. In Sections 4, 7, 8, 17, 18 and 19 of the Matches Excise Duty Regulation No. IV of 1992, the exprsssion "His Highness the Maharaja Bahadur in Council" may be substituted for the expression "His Highness the Maharaja Bahadur."

JAMMU AND KASHMIR PRAJA SABHA CERTIFICATE.

The above Regulation having been passed by the Council under their order No. 421-C of 1936 dated 26th June 1936/13th Har 1993 was laid before the Praja Sabha under Section 33 of the Regulation No. 1 of 1991 on 5th October 1936/20th Assuj 1993, received the assent of His Highness the Maharaja Bahadur on 28th October 1936/13th Katik 1993. It will come into operation on 26th Maghar 1923.

(Sd.) HIRANAND RAINA,
SECRETARY,
J. & K. PRAJA SABHA.

The Jammu and Kashmir Stamp Amendment Regulation No. XI of 1993

WHEREAS it is expedient to amend the Jammu and Kashmir Stamp Regulation 1977 for the purpose hereinater appearing it is hereby enacted as follows :—

1. *Short title and extent*—(*i*) This Regulation may be called the Jammu and Kashmir Stamp (Amendment) Regulation, 1993.

(*ii*) It extends to the whole of Jammu and Kashmir State.

2. *Revival of Section 1 of Regulation No. 40 of 1977.*—Section 1 of Regulation No. 40 of 1977 may be revived and shown as under :—

1. (*i*) This Regulation may be called the Stamp Regulation 1977.

(*ii*) It extends to the whole of Jammu and Kashmir State. It shall come into force on the 1st day of Baisakh 1977.

3. *Amendment of Section 3 Regulation 1977.*—In section 3—(*a*) In clause (*b*) the word "cheque" shall be omitted and after the words "Bill of exchange" the words "payable otherwise than on demand" shall be inserted ; and

(*b*) In clause (*c*) the word "cheque" shall be omitted.

4. *Amendment of Section 11 Regulation 1977.*—In clause (*b*) of section 11 the word "cheque" shall be omitted.

5. *Amendment of Section 18 Regulation 1977.*—In subsection (1) of section 18, the word "cheque" shall be omitted.

6. *Amendment of Section 19 Regulation 1977.*—In section 19, after the words "bill of exchange" where they first occur, the words "payable otherwise than on demand" shall be inserted and the word "cheque" in both places where it occurs, shall be omitted.

7. *Amendment of section 47 Regulation 1977.*—In section 47 for the words "promissory note or cheque" the words "or promissory note" shall be substituted and for the words "note or cheque" wherever they occur thereafter the words "or not" shall be substituted.

8. *Amendment of section 49 Regulation 1977.*—In clause (*c*) of Section 49—

(*a*) the word "cheque" shall be omitted and after the words "bills of exchange" the words "payable otherwise than on demand" shall be inserted ;

(*b*) the words "or cheque" wherever they occur, shall be omitted.

(*c*) the word "cheque" wherever it occurs elsewhere shall be omitted; and

(*d*) for the words "any bill of exchange" where they occur for the first time in sub-clauses (1) and (3), the words "any such bill of exchange" shall be substituted.

9. *Amendment of Section 62 Regulation 1977.*—In clause (*a*) of sub-section (1) of section 62 the word "cheque" shall be omitted and after the words "bill of exchange" the words "payable otherwise than on demand" shall be inserted.

10. *Amendment of Section 67 Regulation 1977.*—In Section 67, after the words "bill of exchange" the words "payable otherwise than on demand" shall be inserted.

11. *Amendment of Article 13 of Schedule 1 Regulation 1977.*—In Article 13 of Schedule 1, the word "figure and brackets" and "(3)" shall be omitted and clause (*a*) together with the entry "one anna" in the second column against that clause shall be omitted.

12 *Amendment of Article 21 of Schedule 1 Regulation 1977.*—Article No. 21 of Schedule 1 shall be omitted.

JAMMU AND KASHMIR PRAJA SABHA CERTIFICATE.

The above Regulation having been passed by the Council under their order No. 641-C dated 26th August 1936/11th Bhadon 1993 was laid before the Praja Sabha under section 38 of the Regulation No. 1 of 1991 on 5th

October 1936/20th Assuj 1993; received the assent of His Highness the Maharaja Bahadur on 2nd November 1936/18th Katik 1993. It will come into operation on 3rd Poh 1993.

(Sd.) RAM NATH *Sharma*,
SECRETARY,
J. & K. PRAJA SABHA.

The Income-tax Amendment Regulation No. XII of 1993.

WHEREAS it is expedient to amend the Jammu and Kashmir Income Tax Regulation, 1991, for the purpose hereinafter appearing it is hereby enacted as follows :—

1. *Short title and extent.*— (*i*) This Regulation may be called the Income Tax (Amendment) Regulation, 1993.

(*ii*) It extends to the whole of Jammu and Kashmir State excepting the Wazarat of Ladakh.

2. *Amendment of section 22 of Regulation IX of 1991.*— In the proviso to sub-section (4) of section 22 of the Jammu and Kashmir Income Tax Regulation, 1991, for the word "three" the word "two" shall be substituted.

JAMMU AND KASHMIR PRAJA SABHA CERTIFICATE.

The above Regulation having been passed by the council under their order No. 771C of 1936 dated 23rd September 1936/8th Assuj 1993, was laid before the Praja Sabha under section 38 of the Regulation No. 1 of 1991 on 29th October 1936/14th Katik 1993, received the assent of His Highness the Maharaja Bahadur on 27th November 1936/13th Maghar 1993. It will come into operation on 31st December 1936/17th Poh 1993.

(Sd.) HIRA NAND *Raina*,
SECRETARY,
J. & K. PRAJA SABHA.

Ailan No. 7 of 1969 (Amendment) Regulation XIII of 1993.

Regulation to amend Ailan No. 7 of 5th Har, 1969, regarding the construction of brick kilns and preparation of lime, plaster of Paris and surkhi.

Preamble:—Whereas it is expedient to amend Ailan No. 7 of 1969 for the purpose hereinafter appearing it is enacted as follows:—

1. *Short title and extent.*—(1) This Regulation may be called Ailan No. 7 of 1969 (Amendment) Regulation.

(2) It shall extend to the Province of Kashmir.

2. The following words may be added at the end of Rule 3—

"This application will not be necessary when a kiln is to be set up by a land-holder having proprietary rights in the village for his own use."

3. Rule 4 may be re-written as below :—

"On presentation of an application under Rule 3, the Tehsildar will ascertain whether the kiln is to be set up by the applicant on his own land or on the land entered in the name of some person other than the applicant. If a kiln is to be set up on land entered in the name of some person other than the applicant, an enquiry shall be made from that other person whether he has any objection, and if he objects or the land is reserved for Kahcharai, license shall be refused. When no objection is made and the applicant by means of an affidavit takes responsibility for the payment of the Land Revenue, license shall be granted in the form B."

Exception A to Rule 4 shall be deleted and exceptions B and C shall be renumbered as A and B and shall remain as at present.

4. In Rule 5 the words "one hundred and fifty yards (four hundred and fifty feet)" may be substituted for the words "one quarter of a mile." Also add words "Town area" after the word "Committee" wherever it occurs in this rule.

5. The following para. as para. 2 may be added to Rule 6:—

If a person sets up a kiln for his own use on his own land he shall not be liable to pay any fees. But an annual fee of

Rs. 6 shall be charged if he sets up a kiln for trade purposes on his own land entered in his name.

(Sd.) L. G. MUKERJI,
President,
J. & K. Praja Sabha.

Received the assent of His Highness the Maharaja Bahadur on 15th January 1937/3rd Magh 1993.

(Sd.) HAVELI RAM,
for Prime Minister.

PRAJA SABHA SECRETARIAT CERTIFICATE.

The above Regulation was passed by the Praja Sabha on 26th October 1936/11th Katik, 1993, received the assent of His Highness the Maharaja Babadur on 15th January, 1937/3rd Magh 1993 and will come into operation on.

(Sd.) HIRA NAND RAINA,
Secretary, J. & K. Praja Sabha.

The Jammu and Kashmir Code of Criminal Procedure Amendment Regulation No. XIV of 1993.

Preamble:—Whereas it is expedient to amend the Criminal Law of the Jammu and Kashmir State to the extent provided by this Regulation it is hereby enacted as follows:—

1. *Short title and extent.*—(*i*) This Regulation may be called "the Jammu and Kashmir Code of Criminal Procedure Amendment Regulation No. XIV of 1993."

(*ii*) It shall extend to the whole of the Jammu and Kashmir State.

(*iii*) It shall come into force from the day it receives assent of His Highness the Maharaja Bahadur.

2. *Amendments provided.*—The following provisos be added after sub-section (*i*) of section 350 of the Code of Criminal Procedure (Regulation No. XXIII of 1989):—

Provided as follows:—

(*a*) in any trial the accused may, when the second magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;

(*b*) the High Court or in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the magistrate before whom the conviction was held, if such court or District Magistrate is of opinion that the accused has been materially prejudiced thereby and may order an enquiry or trial.

(Sd.) LAL GOPAL MUKERJI,
President,
J. & K. Praja Sabha.

OFFICE OF THE PRIME MINISTER.

Received the assent of His Highness the Maharaja Bahadur on the 24th day of February 1937.

(Sd.) KHUSRO JANG,
Prime Minister.

PRAJA SABHA SECRETARIAT CERTIFICATE.

The above Regulation was passed by the Praja Sabha on 26th October 1936/11th Katik, 1993, received the assent of His Highness the Maharaja Bahadur on 24th February 1937/14th Magh 1993, and will come into operation on 25th March 1937/5th Chet 1993.

(Sd.) HIRANAND RAINA,
Secretary,
J. & K. Praja Sabha.

Order No. 26-H of 1937.

Judicial Minister's Memo. No. 942, dated 25th February 1937, regarding amendment of section 6 of the Cantonment Regulation No. X of 1991.

I hereby accord sanction to the Bill to amend section 6 of the Cantonments Regulation No. X of 1991 which forms an enclosure to this order.

(Sd.) HARI SINGH,
Maharaja,
Jammu and Kashmir.

Dated, Jammu,
the 6th April 1937.

No. 7 L/1993. Dated Jammu, the 10th April 1937.

Published for general information.

(Sd.) RAM NATH *Sharma*,
Judicial Secretary.

Order No. 1-L of 1993.

In matters reserved to His Highness the Maharaja Bahadur under section 7 (e) of Regulation No. 1 of 1991.

A Regulation to amend the Cantonments Regulation.

Whereas it is expedient to amend the Cantonments Regulation No. X of 1991, for the purpose hereinafter appearing we hereby order as follows :—

(1) *Amendment of section 6 Regulation No. X of 1977.* —In section 6 the words "and cantonment authority" occuring in line 4 between the words "Minister" and "and" shall be deleted.

(Sd.) HARI SINGH,
Maharaja,
G.C.S.I., G. C. I. E., K.C.V.O., A.D.C.

The Water Mills (Amendment) Regulation No. 1 of 1994.

Whereas it is expedient to amend the Water Mills Regulation No. XVII of 1989 for the purpose hereinafter appearing it is hereby enacted as follows:—

1. *Short title and extent.*—(i) This Regulation may be called the Water Mills (Amendment) Regulation No. 1 of 1994.

(ii) The extent of this amendment Regulation shall be the same as that of Regulation No. XVII of 1989.

2. *Amendment of section 13. Regulation No. XVII of 1989.*—The following shall be substituted for the present Section 13:—

"13. (i) Any person constructing a mill under proper authority on a land owned by the State will be granted on mutation sanctioned by the Tahsildar of the Tahsil concerned, occupancy rights in the area in which the mill is situated.

(ii) A person starting mill on a land held in proprietary rights by a zamindar will be shown in Kasht column and the revenue chargeable thereon will be shown in the demand column."

JAMMU AND KASHMIR PRAJA SABHA
CERTIFICATE.

The above Regulation was laid before the Praja Sabha under Section 39 of Regulation No. 1 of 1991 on 6th April 1937/25th *Chet* 1993, passed by the Council under their order No. 323-C of 1937 dated 30th April 1937/18th *Baisakh* 1994, received the assent of His Highness the Maharaja Bahadur on 20th May 1937/7th *Jeth* 1994 and will come into operation on—.

(Sd) HIRANAND RAINA,
Secretary, Praja Sabha.

The Possession Tax Repealing Regulation No. II of 1994.

Whereas it is expedient to repeal the Rules and Regulations regarding the recovery of Possession Tax on all motor cars and motor cycles (but not motor lorries) it is hereby enacted as follows:—

1. *Short title and extent.*—(i) This Regulation may be called the Possession Tax Repealing Regulation No. II of 1994.

(ii) This Regulation shall come into force retrospectively with effect from first of October 1936.

2. *Repeal of enactments.*—Regulations and orders so far passed for the recovery of Possession Tax are hereby cancelled.

JAMMU AND KASHMIR PRAJA SABHA
CERTIFICATE.

The above Regulation was laid before the Praja Sabha under section 39 of Regulation No. I of 1991 on 6th April 1937 25th *Chet* 1992, passed by the Council under their order No. 322-C of 1937 dated 30th April 1937/18th *Baisakh* 1994, received the assent of His Highness the Maharaja Bahadur on 20th May 1937/7th *Jeth* 1994, and will come into operation retrospectively with effect from 1st October 1936.

(Sd.) HIRA NAND RAINA,
SECRETARY,
Jammu and Kashmir Praja Sabha.

The Co-operative Societies (Amendment) Regulation No. III of 1994.

Preamble.—Whereas it is expedient to amend the Co-operative Societies Regulation No. VI of 1993 for the purpose hereinafter appearing it is enacted as follows:—

1. *Short title and extent.*—(*i*) This Regulation may be called the Co-operative Societies (Amendment) Regulation No. III of 1994.

(*ii*) It shall extend to the whole of Jammu and Kashmir State.

2. *Amendment of section 8 of Regulation VI of 1993.*—In section 8 the words "or where two or more villages" shall be added between the words "villages" and "shall".

3. *Amendment of section 13-A Regulation VI of 1993.*—In sub-section 3 of section 13-A the word "on" shall be inserted between the words "resolution" and "all" where they occur for the first time. In sub-section 4 (1) of the same section the word "re-payment" shall be substituted for the word "payment".

4. *Amendment of section 13-B Regulation VI of 1993.*—In sub-section 5 of section 13-B the words "in clause (4) are not repaid or the claims of the creditors referred to" where they occur second time shall be deleted.

5. *Amendment of section 21 Regulation VI of 1993.*—In section 21-A the word "due" shall be substituted for the word "owing" in the first line of the clause.

The word "purchase" shall be substituted for "purchasers" in the proviso to clause (a) of the same section.

6. *Amendment of section 24 Regulation VI of 1993.*—In section 24 the word "this" shall be substituted for the word "his" between the words "in" and "behalf".

7. *Amendment of section 26 Regulation VI of 1993.*—In section 26 the word "shares" shall be substituted for the word "share".

8. *Amendment of section 28 Regulation VI of 1993.*—In section 28 the words "the amount due under such decree, award" shall be inserted between the words "recover" and "or". The word "or" shall be inserted between the words "award" and "order" occuring in the last line of the section.

9. *Amendment of section 36 Regulation VI of 1993.*—In section 36 the words "as defined in section 2 of the Indian Charitable Act 1890" shall be deleted.

10. *Amendment of section 39 Regulation VI of 1993.*—In the heading of section 39 the word "of" shall be inserted between the words "inspection" and "books".

11. *Amendment of section 40 Regulation VI of 1993.*— In section 40 a full stop shall be put after the word "inspection" where it occurs for the second time and the first letter of the word "the" shall be shown as captital.

12. *Amendment of section 43 Regulation VI of 1993.*— In the head line of the matter coming after section 42 the word "re-election" shall be substituted for the word "supersession".

The "re-election" shall be substituted also for the word "supersession" in the heading of section 43.

13. *Amendment of section 49 Regulation VI of 1993.*— In section 49 the word "Act" occuring at the end of the section shall begin with small "a".

14. *Amendment of section 63 (1) of Regulation VI of 1993.*—In section 63 (1) the word "Act" shall be substituted for the word "Regulation" occuring in line 3.

15. *Amendment of section 64 Regulation VI of 1993.*— In section 64 the words "without prejudice to any other provision of this Regulation" shall be inserted in the beginning of the section and the word "An" with which the section begins at present shall begin with a small "a".

16. *Amendment of section 66 Regulation VI of 1993.*— The following shall be substituted for the present section 66:—

"66. *Construction of references to Co-operative Societies Act 1970.*—All references to the Co-operative Societies Act 1970 occuring in any of the enactments hereto-in-force in the State shall be construed as reference to this Regulation."

17. *Amendment of section 68 Regulation VI of 1993.*— The following shall be added as para. 2 to section 68:—

"But all authorities and permissions given, exemptions granted, orders and powers made, notifications published, rules, conditions and forms prescribed under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published and prescribed under this Regulation."

(Sd.) LAL GOPAL MUKERJEE,
President, Praja Sabha.

PRIME MINISTER'S OFFICE.

Received the assent of His Highness the Maharaja Bahadur on 22nd July 1937 corresponding to 7th *Sawan* 1994.

(Sd.) HAVELI RAM,
For Prime Minister.

JAMMU AND KASHMIR PRAJA SABHA CERTIFICATE.

The above Regulation was passed by the Praja Sabha on 21st April 1937/9th *Baisakh* 1994, received the assent of His Highness the Maharaja Bahadur on 22nd July 1937/7th *Sawan* 1994.

SECRETARY,
Jammu and Kashmir, Praja Sabha.

The Ladakh Frontier Crossing (Amendment) Regulation, 1994.

Order No I of 1994.

In matters reserved to His Highness the Maharaja Bahadur under section 7 (c) of Regulation No. 1 of 1991.

The Ladakh Frontier Crossing (Amendment) Regulation of 1994.

WHEREAS it is expedient to amend the Ladakh Frontier Crossing Regulation, 1992, it is hereby commanded as follows:—

1. *Short title and extent.*—This Regulation shall be called the Ladakh Frontier Crossing (Amendment) Regulation, 1994.

It shall come into force forthwith.

2. *Amendment of Order No. 1 of 1992.*—For section 1 of the Ladakh Frontier Crossing Regulation 1992 the following section shall be substituted:—

"1. No person other than those in possession of passports, Travellers' or pilgrims' passes or other travel documents which in the case of persons entering Ladakh, shall if not granted by a recognised British authority be vised by such an authority, shall travel north or south of the river Sindh in Ladakh without a permit granted by the Minister-in-Charge of the Political Department, by the Wazir Wazarat Ladakh or the Tehsildar of Skardu granting permission to a particular individual described in the permit to travel accross the Sindh from North to South or from South to North."

(Sd.) HARI SINGH,
Maharaja,
G. C. S. I., G. C. I. E., K. C. V. O.

The Identification of Prisoners Regulation IV of 1994.

WHEREAS it is expedient to authorize the taking of measurements and photographs of convicts and others; it is hereby enacted as follows:—

1. *Short title and extent.*—(i) This Regulation may be called the Indentification of Prisoners Regulation No. IV of 1994.

(ii) It extends to the whole of Jammu and Kashmir State.

2. *Definition.* —In this Regulation unless there is anything repugnant in the subject or context:—

(a) "Measurements" include finger impressions and foot print impressions;

(b) "Police Officer" means an officer-in-charge of a Police Station. A Police Officer making an investigation under Chapter XIV of the Code of Criminal Procedure, 1989, or any other Police officer not below the rank of Sub-Inspector, and

(c) "Prescribed" means prescribed by rules made under this Regulation.

3. ***Taking of measurements etc., of convicted persons.***—Every person who has been—

(a) convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence, which would render him liable to enhanced punishment on a subsequent conviction, or

(b) ordered to give security for his good behaviour under Section 118 of the Code of Criminal Procedure 1989,

shall, if so required, allow his measurement and Photograph to be taken by a Police officer in the prescribed manner.

4. *Taking of measurements etc., of non-convicted persons.*—Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a Police officer, allow his measurements to be taken in the prescribed manner.

5. *Power of Magistrate to order a person to be measured or photographed.*—If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code

of Criminal Procedure, 1989, it is expedient to direct any person to allow his measurements or photographs to be taken, he may make an order to that effect, and, in the case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a Police officer.

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class.

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

6. *Resistance of the taking of measurements etc.*—(1) If any person who under this Regulation, is required to allow his measurements or photographs to be taken resists or refuses to allow the taking of the same, it shall be lawful with the permission of a Magistrate to use all means necessary to secure the taking thereof.

(2) Resistance to or refusal to allow the taking of measurements or photographs under this Regulation shall be deemed to be an offence under section 186 of the Ranbir Penal Code.

7. *Destruction of photographs and records of measurements etc. on acquittal.*—Where any person who not having been previously convicted of an offence punishable with rigorous imprisonment for a term of one year or upwards has had his measurements taken or has been photographed in accordance with the provisions of this Regulation is released without trial or discharged or acquitted by any court, all measurements and all photographs (both negatives and copies) so taken shall, unless the court or (in case where such person is released without trial) the District Magistrate, for reasons to be recorded in writing otherwise directs, be destroyed or made over to him.

8. *Power to makes rules.*—(1) The Government of His Highness the Maharaja Bahadur may make rules for the purpose of carrying into effect the provisions of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for:—

(a) restrictions on the taking of photographs of persons under section 5 ;

(b) the place at which measurements and photographs may be taken ;

(c) the nature of the measurements that may be taken ;

(d) the method in which any class or classes of measurements shall be taken ;

(e) the dress to be worn by a person when being photographed under section 3 ; and

(f) the preservation, safe custody, destruction and disposal of records of measurements and photographs.

9. *Bar of suits.*—No suit or other proceeding shall lie against any person for anything done, or intended to be done, in good faith under this Regulation or under any rule made thereunder.

(Sd.) L. G. MUKERJI,
President,
J. & K. Praja Sabha.

Received the assent of His Highness the Maharaja Bahadur on 23rd August 1937 corresponding to 8th *Bhadon* 1994.

(Sd.) HAVELI RAM,
for Prime Minister.

JAMMU AND KASHMIR PRAJA SABHA CERTIFICATE.

The above Regulation was passed by the Praja Sabha on 17th April 1937/5th Baisakh 1994, received the assent of His Highness the Maharaja Bahadur on 23rd August 1937/8th Bhadon 1994.

(Sd.) HIRANAND RAINA,
Secretary,
J. & K. Praja Sabha.

[redacted]

Title [redacted]

Author [redacted]

Accession No. [redacted]

Call No. [redacted]

BORROWER'S NO.	ISSUE DATE	BORROWER'S NO.	ISSUE DAT
[redacted]			